BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION OF RATES (FILED APRIL 11, 2014)	))))	**PSC DOCKET NO. 14-132**

JOINT OPPOSITION OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE AND THE STAFF OF THE DELAWARE PUBLIC SERVICE COMMISSION TO ARTESIAN WATER COMPANY, INC.'S MOTION TO SUPPLEMENT THE RECORD

The Delaware Division of the Public Advocate ("DPA") and the Staff of the Delaware Public Service Commission ("Staff"), by and through their counsel, hereby oppose the motion filed by Artesian Water Company, Inc. ("Artesian" or the "Company") to supplement the record (the "Motion"), and in support thereof state as follows.

1. The DPA and Staff believe that it is important to explain at the outset why we oppose the Company's Motion. It is not because this is a large expense item: to the contrary, it is only worth approximately $15,000 of revenue requirement. It is not because we like being contrary: we both have other pressing matters (such as the proposed Exelon/PHI merger). Rather, the DPA and Staff oppose Artesian's Motion because of the important principle it implicates: the ability of parties to rely on the evidence proffered at the evidentiary hearing without concern that at some point after the hearings have concluded, another party will decide or discover that it has made a strategic or ostensibly clerical mistake in the presentation of its case and seek to augment the record. That is the situation here, and its resolution will have implications not just for this case, but also for all future proceedings that are litigated before the Commission.

STATEMENT OF FACTS

2. Artesian filed its application for a rate increase in April 2014. In its pre-filed direct testimony, Artesian sought to recover the expense it claimed it incurred in connection with a compensation study. (Exh. 1, Valcarenghi Direct Testimony at page 34 and Schedule DLV-3H).

3. Pursuant to the approved procedural schedule, the DPA and Staff served Artesian with data requests on July 7, 2014. Among others, Staff promulgated the following data request relevant to the compensation study referenced in Mr. Valcarenghi's direct testimony:

> PSC-RR-81 Executive compensation cost. a. Identify and provide a copy of *all compensation surveys, studies of total compensation, and payroll studies that Artesian has used in the past five years, is currently using, and/or plans to use in 2013 or 2014* to evaluate whether its executives' compensation levels are reasonable. b. Identify and provide a copy of *all compensation surveys, studies of total compensation, and payroll studies that Artesian has used in the past five years, is currently using, and/or plans to use in 2013 or 2014* to evaluate whether its executives' compensation levels are comparable to similar executive positions at other similar-sized water utilities.

(Exh. 75) (emphasis added).

4. On August 8, 2014, Artesian responded to this data request by producing a compensation study performed in 2008. (Exh. 75).

5. On September 26, 2014, the DPA submitted the pre-filed testimony of its revenue requirements witness Glenn A. Watkins. Regarding the compensation study, Mr. Watkins testified as follows:

> With regard to the Company's request to include $75,000 for a new compensation study, I recommend the disallowance of this entire amount. The Company has not conducted a compensation study since 2008, nor

> has it incurred any expenses associated with compensation studies. Furthermore, there is no evidence that the Company has commissioned a new study or plans to do so within the test period, or even in the foreseeable future.

(Exhs. 17 and 17A, Watkins Direct Testimony (Confidential and Public Versions) at 36).

6. On October 27, 2014, the Company submitted pre-filed rebuttal testimony on revenue requirement issues from Mr. Valcarenghi. Addressing Mr. Watkins' testimony about the compensation study for which Artesian sought recovery, Mr. Valcarenghi stated:

> The Company accepts the cost estimates presented by DPA but notes the Company has incurred costs for a Compensation Study* and therefore recommends the cost be included in the costs to be recovered.

(Exh. 21, Valcarenghi Rebuttal Testimony at 50 and n.6). The footnote stated: "The Company's Confidential Compensation Study was provided to DPA and Staff in response to *PSC-RR-81*." (*Id.*) (emphasis added).

7. Prior to the commencement of the evidentiary hearings, Artesian determined that it wanted Mr. Spacht to adopt Mr. Valcarenghi's pre-filed testimonies and to stand cross-examination on them. The DPA and Staff moved to require Mr. Valcarenghi to stand cross-examination on his pre-filed testimonies, and Artesian opposed that motion. In its opposition, Artesian claimed that Mr. Spacht was "the most knowledgeable person concerning the contested issues." (Artesian Opposition to DPA and Staff Motion to Require Mr. Valcarenghi to Testify at the Evidentiary Hearings, p. 5). The Hearing Examiner denied the DPA and Staff motion in part, holding that Mr. Spacht would be allowed to testify regarding the issues on which Mr. Valcarenghi submitted pre-filed testimony, relying in part on Artesian's representation that Mr. Spacht was the most knowledgeable witness. (Order No. 8686 dated December 6, 2014).

8. The evidentiary hearings commenced on December 8, 2014, and Mr. Spacht began his sojourn on the stand on that date. Regarding Mr. Valcarenghi's testimony, Artesian's counsel questioned Mr. Spacht as follows:

Q: (by Mr. Scaggs): And there are three different exhibits sitting on the table before you. And first, I'll ask you if you recognize premarked Exhibit 1 as the direct testimony of David Valcarenghi?

A: I do.

Q: And do you recognize premarked Exhibit 5 as the supplemental testimony of Mr. Valcarenghi?

A: I do.

Q: And do you recognize Exhibit 21 as the rebuttal testimony of David Valcarenghi?

A: I do.

Q: *And did you participate in the preparation of Mr. Valcarenghi's prefiled testimony?*

A: *I did.*

Q: *Are you knowledgeable about the subject matter of that testimony?*

A: *Very much so.*

Q: *Did you, in fact, draft at least a significant portion of it?*

A: *I drafted portion of his testimony, yes, or helped draft it. Yes.*

Q: *And did you, in fact, review and approve each one of these testimonies before it was prefiled?*

A: *All the documents going out of Artesian with regard to this case went through me.*

Q: *And do you adopt Mr. Valcarenghi's prefiled testimony Exhibits 1, 5 and 21 as your sworn testimony on behalf of Artesian Water Company for purposes of this hearing?*

A: *I do.*

Q: *Do you have any corrections to any of those prefiled testimonies?*

A: *Not at this time.*

(Transcript of Dec. 8, 2014 evidentiary hearing at 304-06) (emphasis added).

9. On cross-examination by DPA's counsel, Mr. Spacht testified as follows:

Q: (by Ms. Iorii): ... I take it you read Mr. Valcarenghi's testimonies in this case since you are adopting them as your own?

A: Yes, ma'am.

Q: And do you agree with your Counsel's representation to the Hearing Examiner [in] its opposition to the DPA's and Staff's motion that you were, quote, intimately involved, end quote, in the preparation of Mr. Valcarenghi's testimony?

A: Absolutely.

Q: And, indeed, I think you said in response to your Counsel's question that you drafted portions of the testimony?

A: I helped draft portions of the testimony. I am primarily responsible for the rate development, the accounting department and the IT development. And as such, I oversee those submissions.

* * *

Q: (by Ms. Iorii): Did you review the responses to data request[s] that Mr. Valcarenghi sponsored?

A: In the same vein that I did his testimony. Yes.

Q: Were you intimately involved in preparing those responses?

A: To the extent those responses included drafting and wordsmithing, all of the schedules I looked at. I did not draft all of the schedules. I did not prepare all of the schedules. I reviewed.

Q: *And all of Mr. Valcarenghi's responses are true and correct to the best of your knowledge, information and belief. Correct?*

A: *Yes.*

Q: You adopt his responses as your own responses for purposes of this docket?

A: Yes.

Q: And will you be able to address questions on any or all of those responses?

A: Yes.

(Transcript of Dec. 8, 2014 evidentiary hearing at 333-35) (emphasis added).

10. On December 9, 2014, Mr. Spacht took the stand for continued cross-examination. The DPA's counsel sought to move the Company's response to PSC-RR-81 (but not the actual document) into the record. Artesian's counsel stated that it wanted the document in the record under seal, but that it "would be inappropriate for questioning of any witness that is available at this hearing as we had put here and certainly inappropriate for public disclosure." (Transcript of Dec. 9, 2014 evidentiary hearing at 415). The following colloquy then took place:

Ms. Iorii: Your Honor, I actually was not going to introduce [the compensation study] into the record because I wasn't planning on asking the witness anything about the substance of what's in it. So why don't we try it this way. Can I ask my questions, and the company can, obviously, object or ...

Mr. Lawrence: What is –

Ms. Iorii: I don't plan to ask him any questions about the substance of what is in here.

Mr. Lawrence: What is the substance of your questioning?

Ms. Iorii: Basically, the date of the document and whether it is the document that was produced in response to this data request.

Mr. Scaggs: We'll stipulate that the date was May 16, 2008. And there is an attachment that we would like admitted under seal that is, in fact, the compensation study. We'll stipulate to those things.

Ms. Iorii: You will stipulate that it was the compensation study that was produced in response to PSC-RR-81.

Mr. Scaggs: Oh, absolutely. Sure.

(*Id.* at 415-18).

11. Later, in response to questions from Staff's counsel, Mr. Spacht testified that he was "well aware" of the issues being contested in the case and he "viewed [Mr. Valcarenghi's] testimony, edited and provided it as my own." (*Id.* at 464). And further on, specifically addressing the compensation study issue, Mr. Spacht and Staff's counsel engaged in the following colloquy:

Q: (by Mr. Geddes): Turning to page 49 [of the rebuttal testimony], you discuss legal expenses and also costs associated with the compensation study?

* * *

Q: You're commenting on the $75,000 associated with the compensation study, which, I believe is in Exhibit 75. Do you see that reference?

A: Yes.

Q: When was that $75,000 paid, if you know?

A: *On or around 2008.*

(*Id.* at 476-77) (emphasis added).

12. After the DPA's and Staff's remaining witnesses testified and Staff and the DPA concluded their presentations, the Company put Mr. Spacht back on the stand to

rebut some of the testimony offered by those parties' witnesses. (*Id.* at 793-812). Mr. Spacht did not address the compensation study in that rebuttal testimony.

13. After all the witnesses had completed their testimony, the Hearing Examiner and the parties discussed two outstanding issues: an in-hearing data request made by the DPA for the hourly rates of each of Artesian's three outside counsel and the issue of the receipt from the Company of unredacted copies of its attorneys' bills for the Chester Water Authority litigation. (*Id.* at 814-19). During this discussion, the Hearing Examiner stated that he would hold the record open for "those two reasons." (*Id.* at 816).

14. The Company produced the unredacted copies of the Chester Water Authority litigation and the hourly rates of its outside counsel on December 12, 2014. The Hearing Examiner gave Staff and the DPA counsel until December 22, 2014 to advise him whether they would require cross-examination of an Artesian witness on the unredacted bills. By email dated December 22, 2014, the DPA's counsel stated that she had reviewed the unredacted bills and did not have any questions for any Artesian witness. She further requested the Hearing Examiner to admit Artesian's confidential response disclosing its outside counsel's hourly rates as Exhibit 92. (Exhibit A).

15. This email prompted Artesian's counsel to contact the DPA's counsel. From the communications that followed, it became apparent that Artesian does not want its outside counsel's hourly rates admitted as an exhibit, even if it is marked confidential. Although Exhibit A to the Company's Motion contains some of the correspondence between and among counsel and the Hearing Examiner on this matter, it does not contain all of it. Therefore, we have attached to this opposition as Exhibit B the emails preceding those that the Company attached to its Motion. Those emails show there was still some

confusion regarding the total amount of rate case expense Artesian was requesting, particularly with respect to the amount being claimed for the compensation study.

16. As Artesian's Motion sets forth, on January 8, 2015 – 30 days after the evidentiary hearings ended – Artesian for the first time asked Staff and the DPA to allow it to supplement the record with a 2013 compensation study. Artesian claims that "[i]n researching this issue, Artesian discovered that confusion might have started when Artesian, in the Rebuttal Testimony of David Valcarenghi, mistakenly identified the compensation study from 2008 (provided in response to PSC-RR-81) in footnote 6 on page 50." (Motion at 2, ¶3). As Artesian states, both the DPA and Staff refused Artesian's request to admit the 2013 compensation study into evidence on the grounds that Artesian's request is untimely.

ARGUMENT

I. Another Hearing Examiner Has Rejected a Similar Attempt to Reopen a Record To Address Matters That Should Have Been Addressed Before or During the Evidentiary Hearings.

17. This is not the first time that a Hearing Examiner has been confronted with a request to supplement or reopen a record. In Docket No. 08-96, a case involving this very same utility, Staff sought to reopen the record to address the Company's proposal to move to monthly billing and to address proposed tariff changes. Artesian objected to Staff's requests. The Hearing Examiner denied Staff's requests, concluding that Staff had had sufficient time to conduct the discovery that it was seeking. *See In the Matter of the Application of Artesian Water Company, Inc, for a Revision in Water Rates*, Docket No. 08-96, Hearing Examiner's Letter Decision dated April 29, 2009 at 9-10. (Exhibit C).

18. The same is true here. Artesian had sufficient time to find the document, and could have introduced it into evidence at numerous points during the evidentiary hearing (for example, in Mr. Valcarenghi's rebuttal testimony; during Mr. Spacht's direct examination on December 8; during Mr. Watkins' cross-examination on December 9; and during Mr. Spacht's rebuttal testimony on December 9).

II. Artesian's Request to Supplement the Record Should Be Denied.

19. The DPA and Staff acknowledge that administrative agencies are not bound by the same rules of evidence and procedure that apply to courts. However, we submit that such rules can provide guidance to Your Honor (and the Commission) in resolving Artesian's Motion.

20. The Delaware Court of Chancery has identified certain relevant factors by which it reviews motions to supplement the record with new evidence. These factors include the following:

(1) Whether the party learned of the evidence since the trial;

(2) Whether the party could have discovered the evidence for use at trial through the exercise of reasonable diligence;

(3) Whether the evidence is so material and relevant that it will likely change the outcome;

(4) Whether the party has sought timely consideration of the new evidence;

(5) Whether the opposing parties would suffer undue prejudice; and

(6) Considerations of judicial economy.

See Pope Investments LLC v. Benda Pharmaceutical, Inc., 2010 WL 3075296, at *1 (Del. Ch. July 26, 2010); *Carlson v. Hallinan*, 925 A.2d 506, 519-520 (Del. Ch. 2006) (citing *Daniel D. Rappa, Inc. v. Hanson*, 209 A.2d 163, 166 (Del. 1965)).[1]

21. As we will show, none of these factors provides any support for granting Artesian's Motion.

A. Artesian Knew of the Document Before the Evidentiary Hearing.

22. Artesian's own Motion demonstrates that it knew about the 2013 compensation study before the hearing. See Motion at ¶2. Thus, Artesian cannot satisfy the first factor.

B. Artesian Could Have Discovered the Document For Use at the Evidentiary Hearing Through the Exercise of Reasonable Diligence.

23. The 2013 compensation study was in Artesian's possession throughout this case. With three attorneys and several Artesian employees working on the case, Artesian clearly could have discovered it prior to or during the evidentiary hearing simply by reviewing its responses to discovery.[2]

---

[1] As later noted by the Court of Chancery, the *Pope* and *Carlson* decisions identified as an additional factor "whether the evidence is material and not merely cumulative." *Pope*, 2010 WL 3075296, at *1; *see also Carlson*, 925 A.2d at 620. According to the Court of Chancery, "this factor would seem subsumed by consideration of whether the evidence is so material and relevant that it will likely change the outcome," so it did not list such items separately in its later cases. *In re Rural Metro Corporation Shareholders Litigation*, 2013 WL 6634009, at *4, n. 1 (Del. Ch., Dec. 17, 2013) (quotation marks omitted).

[2] Artesian contends that it produced the 2013 compensation study to the parties during discovery. (Motion at ¶2). However, answers to data requests/interrogatories are not considered evidence unless introduced and admitted into evidence at the evidentiary hearing. *See Bracey v. Grenoble*, 494 F.2d 566, 570 n.7 (3d Cir. 1974) (citing 8 Wright & Miller, Federal Practice and Procedure § 2180 at 572); *see also Heilig v. Studebaker Corporation*, 347 F.2d 686, 689 (10th Cir. 1965) (emphasizing that "answers to interrogatories do not become evidence in the case, unless voluntarily introduced...."); *Delaware Coca-Cola Bottling Co., Inc. v. General Teamsters Local Union*, 326, 474 F. Supp. 777, 787 n. 17 (D. Del. 1979), *judgment rev'd on other grounds*, 624 F.2d 1182 (3d Cir. 1980) (finding that interrogatory response that was not introduced into evidence may not be considered by the court in reaching its decision); *Patterson Oil Terminals, Inc. v. Charles Kurz & Co.*, 7 F.R.D. 250, 251 (E.D. Pa.1945) (holding that answers to interrogatories are not considered evidence until offered at trial). In sum, each party in this proceeding had the opportunity to present evidence during the hearing; no party should get a "do-over" simply because it later re-thinks its hearing strategy. *See Kennedy v. Emerald Coal & Coke Co.*, 42 A.2d 398, 405 (Del. 1944) (citing general

C. The Actual 2013 Compensation Study Is Not So Material and Relevant That It Will Likely Change the Outcome of the Evidentiary Hearing.

24. The third factor addresses whether the evidence is so material and relevant that it will likely change the outcome of the trial. *See In re Rural Metro,* 2013 WL 6634009, at *5 (Del. Ch. Dec. 17, 2013). The 2013 compensation study does not satisfy that factor. It is not a large expense item; to the contrary, it is only worth approximately $15,000 in the Company's revenue requirement. In relation to the rest of the contested issues, the relatively small amount of costs involved for this evidence is not material or relevant to the larger issues in this rate case, and certainly does not warrant bringing the Hearing Examiner, the parties, their lawyers and a court reporter back for another day of hearings. *See In re Transamerica Airlines Inc.*, 2008 WL 509817, at *4-5 (Del. Ch. Feb. 25, 2008) (denying motion to supplement record with evidence that was not material, could have been obtained and presented before trial, and resulted from an ex parte proceeding); *Sutherland v. Sutherland,* 2008 WL 571253, at *2-3 (Del. Ch. Feb. 14, 2008) (denying motion to supplement because proffered evidence was without any probative value, could have been discovered before trial, and would prejudice non-movant by requiring significant additional litigation).

D. Artesian Did Not Seek Timely Consideration of the 2013 Compensation Study.

25. The fourth factor also weighs against allowing Artesian to supplement the record. This factor asks whether the party has sought timely consideration of the *new* evidence (emphasis added). "This factor presumes that the party did not possess the information at the time of trial and could not have reasonably obtained the evidence for

rule against reopening the record to accept "evidence which could have been elicited by a proper examination"). As the party with the burden of proof, it was incumbent upon Artesian to make its case.

purposes of trial. If both are true, then a party could appropriately present newly discovered evidence after trial, so long as it does not delay unreasonably in doing so." *In re Rural Metro*, 2013 WL 6634009, at *5. As we have shown, the evidence is not new; it was within Artesian's possession throughout the course of this case. And since Artesian could have introduced into evidence in the 2013 compensation study during the hearing, its request to supplement the record with the 2013 study is untimely. *Id.*

26, Moreover, "[f]or sensible reasons, the admission of late-submitted evidence is not favored... ." *TR Investors, LLC v. Genger*, 2009 WL 4696062, at *12, n. 36 (Del. Ch. Dec. 9, 2009). Artesian waited until approximately one month after the evidentiary hearing was held to file its Motion. As noted, the 2013 compensation study was available to and known by Artesian long before the hearing started. It cannot now argue that the Hearing Examiner is required to consider this "new" evidence because such evidence is neither new nor timely.

E. The DPA and Staff Would Suffer Undue Prejudice If the Document Were Admitted Now.

27. The fifth factor requires consideration of the prejudice to the other parties in the case - here, the DPA and Staff. And Staff and the DPA would be prejudiced if the document were admitted now because they cannot cross-examine a Company witness regarding the inconsistencies in the amount of costs being claimed for the compensation study and why the Company did not produce the study in response to the data request that *has* been admitted into evidence. Moreover, as Your Honor is aware, a significant and complex case involving a proposed merger between Exelon Corporation and Pepco Holdings, Inc. is currently pending, with evidentiary hearings scheduled for February 18-20. The DPA and Staff are both involved in that case and have little time for another

hearing in *this* case caused solely by Artesian's failure to introduce during the evidentiary hearing a document it now believes will help its case. Given that a "mini-hearing" would have to be held (i.e., yet another hearing day in front of a court reporter), the time and costs involved by so doing, and the unfairness to the opposing parties if a hearing were not held, the prejudice to Staff and the DPA weighs against Artesian. *See In re Rural Metro*, 2013 WL 6634009, at *6.

F. Considerations of Judicial Economy Weigh Against Granting Artesian's Motion.

28. The final factor, which examines considerations of judicial economy, also weighs in favor of the DPA and Staff. As discussed previously, before the 2013 compensation study could be considered fairly by the Hearing Examiner, another day of the hearing would have to be held so that the DPA and Staff could cross-examine witness(es) for the Company regarding it. In effect another "mini-hearing" would be required to allow the parties to fully develop the record and to allow the Hearing Examiner to evaluate the credibility of the witnesses on this issue. The resulting burdens on the Hearing Examiner and the non-movants weigh strongly against considering the 2013 compensation study. *See Fitzgerald*, 2000 WL 128851, at *2 (refusing to reopen record to accept post-trial evidence in light of burden placed on the parties and Court).

CONCLUSION

29. The Company had ample opportunity to place the evidence of the 2013 compensation study into the record via the testimony of Mr. Spacht, through cross-examination of Mr. Watkins, or by moving the study itself into evidence during the evidentiary hearing. The time to move this study into evidence was during the evidentiary hearing, not a full month later. Despite the numerous Artesian employees

working on the case, and despite being represented by outside counsel experienced in both administrative and court proceedings, Artesian did not do so. This is not "new" evidence; rather, Artesian apparently recognized after the fact that it would be helpful to it to have this document into the record. That recognition comes too late. Based on the foregoing reasoning and authorities, the DPA and Staff respectfully submit that Artesian's Motion should be denied.

/s/ Regina A. Iorii
Regina A. Iorii (#2600)
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

Counsel for the Delaware
Division of the Public Advocate

/s/ James McC. Geddes
James McC. Geddes (#690)
Ashby & Geddes
500 Delaware Avenue
P.O. Box 1150
Wilmington DE 19899
302-654-1888 ext. 230 (telephone)
302-438-9500 (cell phone)
jamesgeddes@mac.com

/s/ Julie M. Donoghue
Julie M. Donoghue (#3724)
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8348
jo.donoghue@state.de.us

Counsel for Staff of the Delaware
Public Service Commission

Dated: January 16, 2015

EXHIBIT A

Iorii, Regina (DOJ)

From: Iorii, Regina (DOJ)
Sent: Monday, December 22, 2014 10:14 AM
To: Lawrence, Mark (DOS)
Cc: Houghton, Michael; Scaggs, R.J.; 'Randall, Karl'; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

Please be advised that the Public Advocate has reviewed the unredacted legal bills for legal and other services that Artesian incurred in connection with the Chester Water Authority litigation and does not have any questions that we would have asked of an Artesian witness.

Based on Mr. Randall's final exhibit list circulated on December 10, 2014, these invoices have been admitted as Exhibit 67A and therefore can be referred to in briefing.

Last, I would ask that Artesian's confidential response to the DPA's in-hearing data request regarding the hourly rates of its counsel in this case be admitted as Exhibit 92.

I wish everyone a very happy holiday!

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

EXHIBIT B

Iorii, Regina (DOJ)

From: Scaggs, R.J. [RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 11:49 AM
To: Iorii, Regina (DOJ); James Geddes (jamesgeddes@mac.com)
Cc: Houghton, Michael; Randall, Karl
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Gina:
I am verifying the accuracy of my statement with the Company and will confirm it in an email to all parties ASAP.
Thank you for your reasonable and cooperative approach on this issue.
RJ

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 11:44 AM
To: Scaggs, R.J.; Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

It was unclear to the DPA that Artesian was agreeing to the amount of rate case expense for this case (with the exception of the compensation study; I further believe that there is still a disagreement over the proper treatment of those expenses – normalization or amortization). I asked questions about the discrepancies in the amounts at the evidentiary hearing but even then was unsure of Artesian's position. If we can use Mr. Scaggs' representation in the below email, then there is no need to admit the response into the record.

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

From: Scaggs, R.J. [mailto:RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 11:37 AM
To: Iorii, Regina (DOJ); Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

I write in response to the request of DPA to admit the response to its in-hearing data request regarding the hourly rates of Artesian's counsel into evidence as Exhibit 92. Artesian has agreed to DPA's recommendation on the amount of rate case expenses (with the exception that Artesian believes that it is proper to include the compensation study in the rate case expenses). Consequently, we see no need for, or relevance of, that data request response in this case. We, otherwise, do not have an objection, provided that the exhibit is maintained as confidential.

On behalf of myself, Morris Nichols and Artesian, Merry Christmas and Happy New Year.

Respectfully,
RJ Scaggs

R. Judson Scaggs, Jr.
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 351-9340 (Direct Dial)
(302) 425-3014 (Fax)
rscaggs@mnat.com

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 10:14 AM
To: Lawrence, Mark (DOS)
Cc: Houghton, Michael; Scaggs, R.J.; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

Please be advised that the Public Advocate has reviewed the unredacted legal bills for legal and other services that Artesian incurred in connection with the Chester Water Authority litigation and does not have any questions that we would have asked of an Artesian witness.

Based on Mr. Randall's final exhibit list circulated on December 10, 2014, these invoices have been admitted as Exhibit 67A and therefore can be referred to in briefing.

Last, I would ask that Artesian's confidential response to the DPA's in-hearing data request regarding the hourly rates of its counsel in this case be admitted as Exhibit 92.

I wish everyone a very happy holiday!

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General

Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

Iorii, Regina (DOJ)

From: Scaggs, R.J. [RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 12:43 PM
To: Iorii, Regina (DOJ); James Geddes (jamesgeddes@mac.com)
Cc: Houghton, Michael; Randall, Karl
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Gina:
I want to be clear and avoid confusion: We did not agree to the *annual* expense level for rate case expense. We agreed to the overall level of *total* rate case expense to be deferred and recovered over time. Our amortization of the various pieces differs from yours. We also disagree with you on the compensation study.
In light of this, do you think that our hourly rates are relevant?
Thank you,
RJ

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 11:44 AM
To: Scaggs, R.J.; Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

It was unclear to the DPA that Artesian was agreeing to the amount of rate case expense for this case (with the exception of the compensation study; I further believe that there is still a disagreement over the proper treatment of those expenses – normalization or amortization). I asked questions about the discrepancies in the amounts at the evidentiary hearing but even then was unsure of Artesian's position. If we can use Mr. Scaggs' representation in the below email, then there is no need to admit the response into the record.

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

From: Scaggs, R.J. [mailto:RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 11:37 AM
To: Iorii, Regina (DOJ); Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L

(DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

I write in response to the request of DPA to admit the response to its in-hearing data request regarding the hourly rates of Artesian's counsel into evidence as Exhibit 92. Artesian has agreed to DPA's recommendation on the amount of rate case expenses (with the exception that Artesian believes that it is proper to include the compensation study in the rate case expenses). Consequently, we see no need for, or relevance of, that data request response in this case. We, otherwise, do not have an objection, provided that the exhibit is maintained as confidential.

On behalf of myself, Morris Nichols and Artesian, Merry Christmas and Happy New Year.

Respectfully,
RJ Scaggs

R. Judson Scaggs, Jr.
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 351-9340 (Direct Dial)
(302) 425-3014 (Fax)
rscaggs@mnat.com

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 10:14 AM
To: Lawrence, Mark (DOS)
Cc: Houghton, Michael; Scaggs, R.J.; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

Please be advised that the Public Advocate has reviewed the unredacted legal bills for legal and other services that Artesian incurred in connection with the Chester Water Authority litigation and does not have any questions that we would have asked of an Artesian witness.

Based on Mr. Randall's final exhibit list circulated on December 10, 2014, these invoices have been admitted as Exhibit 67A and therefore can be referred to in briefing.

Last, I would ask that Artesian's confidential response to the DPA's in-hearing data request regarding the hourly rates of its counsel in this case be admitted as Exhibit 92.

I wish everyone a very happy holiday!

Respectfully yours,

/s/ Regina A. Iorii

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

Iorii, Regina (DOJ)

From: Iorii, Regina (DOJ)
Sent: Monday, December 22, 2014 1:47 PM
To: 'Scaggs, R.J.'; James Geddes (jamesgeddes@mac.com)
Cc: Houghton, Michael; Randall, Karl
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

RJ –

I am not sure I understand.

What total amount of rate case expense are you seeking? Our number PLUS the compensation study? If that is it, could you send me that number so I can make sure that our consultant agrees?

And I believe you are seeking to amortize it rather than normalize it.

If we do not agree on the total amount to be recovered (that is, our number PLUS the compensation study), then yes, your rates are relevant.

Gina

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

From: Scaggs, R.J. [mailto:RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 12:43 PM
To: Iorii, Regina (DOJ); James Geddes (jamesgeddes@mac.com)
Cc: Houghton, Michael; Randall, Karl
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Gina:
I want to be clear and avoid confusion: We did not agree to the *annual* expense level for rate case expense. We agreed to the overall level of *total* rate case expense to be deferred and recovered over time. Our amortization of the various pieces differs from yours. We also disagree with you on the compensation study.
In light of this, do you think that our hourly rates are relevant?
Thank you,
RJ

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 11:44 AM

To: Scaggs, R.J.; Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

It was unclear to the DPA that Artesian was agreeing to the amount of rate case expense for this case (with the exception of the compensation study; I further believe that there is still a disagreement over the proper treatment of those expenses – normalization or amortization). I asked questions about the discrepancies in the amounts at the evidentiary hearing but even then was unsure of Artesian's position. If we can use Mr. Scaggs' representation in the below email, then there is no need to admit the response into the record.

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

From: Scaggs, R.J. [mailto:RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 11:37 AM
To: Iorii, Regina (DOJ); Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

I write in response to the request of DPA to admit the response to its in-hearing data request regarding the hourly rates of Artesian's counsel into evidence as Exhibit 92. Artesian has agreed to DPA's recommendation on the amount of rate case expenses (with the exception that Artesian believes that it is proper to include the compensation study in the rate case expenses). Consequently, we see no need for, or relevance of, that data request response in this case. We, otherwise, do not have an objection, provided that the exhibit is maintained as confidential.

On behalf of myself, Morris Nichols and Artesian, Merry Christmas and Happy New Year.

Respectfully,
RJ Scaggs

R. Judson Scaggs, Jr.
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street
P.O. Box 1347

Wilmington, DE 19899
(302) 351-9340 (Direct Dial)
(302) 425-3014 (Fax)
rscaggs@mnat.com

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 10:14 AM
To: Lawrence, Mark (DOS)
Cc: Houghton, Michael; Scaggs, R.J.; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

Please be advised that the Public Advocate has reviewed the unredacted legal bills for legal and other services that Artesian incurred in connection with the Chester Water Authority litigation and does not have any questions that we would have asked of an Artesian witness.

Based on Mr. Randall's final exhibit list circulated on December 10, 2014, these invoices have been admitted as Exhibit 67A and therefore can be referred to in briefing.

Last, I would ask that Artesian's confidential response to the DPA's in-hearing data request regarding the hourly rates of its counsel in this case be admitted as Exhibit 92.

I wish everyone a very happy holiday!

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

Iorii, Regina (DOJ)

From: Scaggs, R.J. [RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 3:36 PM
To: Lawrence, Mark (DOS); Iorii, Regina (DOJ)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Mr. Lawrence:
I am communicating with Ms. Iorri to make sure that we agree on the facts necessary to make the exhibit unnecessary. We will report back to you as soon as possible.
Thank you.
RJ Scaggs

From: Lawrence, Mark (DOS) [mailto:mark.lawrence@state.de.us]
Sent: Monday, December 22, 2014 1:26 PM
To: Iorii, Regina (DOJ); Scaggs, R.J.
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Mr. Scaggs: Please respond to Ms. Iorri's email below. Happy Holidays to everyone at your firm.

Mark Lawrence
Senior Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Blvd.
Cannon Building, Suite 100
Dover, DE 19904
Tel: (302) 736-7540
Fax: (302) 739-4849
Email: mark.lawrence@state.de.us

From: Iorii, Regina (DOJ)
Sent: Monday, December 22, 2014 11:44 AM
To: 'Scaggs, R.J.'; Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

It was unclear to the DPA that Artesian was agreeing to the amount of rate case expense for this case (with the exception of the compensation study; I further believe that there is still a disagreement over the proper treatment of those expenses – normalization or amortization). I asked questions about the discrepancies in the amounts at the evidentiary hearing but even then was unsure of Artesian's position. If we can use Mr. Scaggs' representation in the below email, then there is no need to admit the response into the record.

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

From: Scaggs, R.J. [mailto:RScaggs@MNAT.com]
Sent: Monday, December 22, 2014 11:37 AM
To: Iorii, Regina (DOJ); Lawrence, Mark (DOS)
Cc: Houghton, Michael; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: RE: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

I write in response to the request of DPA to admit the response to its in-hearing data request regarding the hourly rates of Artesian's counsel into evidence as Exhibit 92. Artesian has agreed to DPA's recommendation on the amount of rate case expenses (with the exception that Artesian believes that it is proper to include the compensation study in the rate case expenses). Consequently, we see no need for, or relevance of, that data request response in this case. We, otherwise, do not have an objection, provided that the exhibit is maintained as confidential.

On behalf of myself, Morris Nichols and Artesian, Merry Christmas and Happy New Year.

Respectfully,
RJ Scaggs

R. Judson Scaggs, Jr.
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 351-9340 (Direct Dial)
(302) 425-3014 (Fax)
rscaggs@mnat.com

From: Iorii, Regina (DOJ) [mailto:regina.iorii@state.de.us]
Sent: Monday, December 22, 2014 10:14 AM
To: Lawrence, Mark (DOS)
Cc: Houghton, Michael; Scaggs, R.J.; Randall, Karl; 'James Geddes'; Donoghue, Julie M (DOS); 'Coomes, Todd A.'; Bonar, David L (DOS); Price, Ruth A (DOS); Maucher, Andrea (DOS)
Subject: Docket No. 14-132 (Artesian Rate Increase Request)

Dear Mr. Lawrence:

Please be advised that the Public Advocate has reviewed the unredacted legal bills for legal and other services that Artesian incurred in connection with the Chester Water Authority litigation and does not have any questions that we would have asked of an Artesian witness.

Based on Mr. Randall's final exhibit list circulated on December 10, 2014, these invoices have been admitted as Exhibit 67A and therefore can be referred to in briefing.

Last, I would ask that Artesian's confidential response to the DPA's in-hearing data request regarding the hourly rates of its counsel in this case be admitted as Exhibit 92.

I wish everyone a very happy holiday!

Respectfully yours,

/s/ *Regina A. Iorii*

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

EXHIBIT C

STATE OF DELAWARE
THE PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD, SUITE 100
CANNON BUILDING
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

April 29, 2009

[VIA FIRST CLASS MAIL AND ELECTRONIC MAIL]

TO THE PARTIES:

RE: IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION IN WATER RATES (FILED APRIL 22, 2008) PSC DOCKET NO. 08-96

Dear Parties:

This letter constitutes my decision regarding Commission Staff's ("Staff's") request to open the record for further investigation of Artesian Water Company, Inc.'s ("Artesian" or "the Company") move from quarterly to monthly billing and to clarify some rate design issues in the above-captioned rate revision case.

BACKGROUND

On April 16, 2009, Staff counsel, James McC. Geddes, forwarded to me a letter requesting the opportunity to open the record to clarify and to further review the Company's proposal to move from a quarterly billing system to a monthly billing system. Appendix "A." In addition, Staff asserted that the record should be opened for further investigation of three rate design issues Artesian included in its supplemental testimony. Staff maintains that placing these tariff issues in supplemental testimony rather that its application-in-chief violates the *Minimum Filing*

Requirements for all Regulated Companies Subject to the Jurisdiction of the Public Service Commission, Part A.

In light of the far-reaching and serious ramifications of Staff's request, I scheduled a hearing for April 22, 2009 on what is essentially (but not styled as) Staff's motion to reopen the record. In order to avoid any confusion or misunderstanding of the parties' positions or the rationale for their respective positions, I required counsel for the parties, except for counsel for General Motors, Michael J. Quinan, Esquire, to appear in person.[1] Mr. Quinan was permitted to participate by telephone in order to avoid the expense and time in traveling from Richmond, Virginia. Further, interested counsel, witnesses and consultants for the parties were invited to participate by conference telephone call.[2]

By electronic mail dated April 17, 2009, Artesian notified me it would respond to Staff's letter by the close of business on April 21, 2009, which it did. Appendix "B." In addition, the Division of the Public Advocate also submitted its citations to the documents which it contends support its position. Appendix "C."

---

[1] Except as noted below, the parties were represented in person at the hearing as follows:

Commission Staff: James McC. Geddes, Esquire (who presented the motion and argued for Staff) of Ashby & Geddes. Also present was Deputy Attorney General Regina Iorii, Esquire.

Artesian Water Company: R. Judson Scaggs, Jr., Esquire (who argued for the Company) and Geoffrey A. Sawyer, III, Esquire of Morris, Nichols Arsht & Tunnell. Also present for Artesian Water Company was its Chief Financial Officer, David B. Spacht.

Division of the Public Advocate: Deputy Attorney General Kent Walker, Esquire. In addition, the Public Advocate G. Arthur Padmore and Deputy Public Advocate Michael Sheehy also attended.

Christiana Care Health Services: Glenn C. Kenton, Esquire of Richards, Layton & Finger, P.A.

General Motors Corporation: Michael J. Quinan, Esquire of Christian & Barton, L.L.P. participated by telephone.

[2] The following attorneys, witnesses, staff and consultants for the parties participated by conference call:

Commission Staff: Joseph C. Handlon, Esquire, Deputy Attorney General, Kevin S. Neilson, Regulatory Policy Administrator, Jack Schreyer, Public Utilities Analyst; David Bonar, Ombudsman; Andrea Maucher, Public Utilities Analyst.

Artesian Water Company: Connie McDowell, Senior Rates Analyst; Diane Burns, Senior Rates Analyst.

Division of the Public Advocate: James D. Cotton and Andrea C. Crane of The Columbia Group, Inc.

ARGUMENTS OF THE PARTIES

A. QUARTERLY vs. MONTHLY BILLING

Staff contends that the record should be opened to allow it an opportunity to file limited discovery on the potential cost savings associated with the change from quarterly to monthly billings, as well as to investigate the long-term impacts to the entire customer base from the change. Appendix A at p. 1. If granted such limited discovery, Staff proposes to file limited supplemental testimony on the impact of the change on ratepayers and on revenues. Staff argues that this change has "potential cost impacts on ratepayers, which impacts were not reviewed or analyzed by Staff, although they should have been." *Id.* Further, Staff notes that this change has cost implications for the Company as well as ratepayers. *Id.*

At oral argument on Staff's motion, Mr. Geddes observed that Staff has widely discussed (through workshops and conversations with Staff members) the costs and benefits of Advanced Metering Technology ("AMI") with Delmarva Power & Light Company ("Delmarva"). Tr. 559. Delmarva plans on introducing 400,000 meters in the next twelve to eighteen months or by the end of 2010.[3] *Id.* In contrast, Mr. Geddes observed that in response to a 2007 memorandum from Staff regarding a generic Commission docket (Tr. 556), Artesian filed, without further discussion or explanation with Staff, the proposal for monthly billing in this case. Tr. 557.

Mr. Geddes acknowledged that Staff had an opportunity in this case to investigate the proposal and to analyze it, but did not do so. Tr. 558. Further, Mr. Geddes explained that given the potential impacts to other water customers from this proposal, Staff believes that the issue of advanced metering should be examined more generically, including its costs and benefits. Tr. 558. Further, Mr. Geddes clarified that Staff was not opposed to deployment of the technology. However, Staff would like to scrutinize Artesian's proposal to "have some better information of what the potential savings are and make sure there aren't efficiencies that can be gained by thinking and trying to integrate, to the extent possible, what Delmarva is doing across the whole state." Tr. 559-560.

Artesian responded by noting that its proposal to initiate monthly billing for its customers south of the C&D Canal was made in its original April 22, 2008 Application for an increase in water rates (the "Application"). On behalf of Artesian, R. Judson Scaggs, Esquire, stated that Artesian's witness, Richard S. Minch, submitted prefiled testimony that expressly stated

---

[3] References to the transcript of the oral argument held on April 22, 2009 will be cited as "Tr.__."

where the cost recognition for the change to monthly billing was reflected in the schedules submitted as part of the Application. See Evidentiary Hearing Ex. 32. Mr. Minch further stated that the Company believed any additional costs associated with the change would be offset by improvements in cash working capital, due to the reduction in lag time in receipt of payments. Further, Mr. Scaggs noted that Mr. Minch's pre-filed testimony was filed concurrently with Artesian's Application on April 22, 2008. Appendix B at p. 2.

Mr. Scaggs observed that Artesian's April 22, 2008 Application stated that it intended to invest $1.3 million to engage the services of a third party provider to equip all of Artesian's residential customers south of the C&D Canal - approximately 8200 customers - with Automatic Meter Reading ("AMR") technology. Application at ¶ 8. The Application provided that when the radio read meter system was completed (which it was prior to September 30, 2008), Artesian would initiate monthly billing for all customers located south of the C&D Canal. Id. at ¶ 8 of the Application.

Mr. Scaggs asserted that this proposal was not a surprise to Staff because the proposal, and the resulting cost effects, were plainly stated in the Company's original application. Artesian argued that Staff had "ample opportunity to investigate the impact of monthly billing on the Company's billing methodology during the nearly five months of discovery in this case, and the Parties to this proceeding did propound discovery on the Company's monthly billing proposal." Appendix B at 3. Artesian noted that it provided Staff and the other parties an internal memorandum outlining the Company's reasons for the move from quarterly to monthly billing. Appendix B at 3. Further, Mr. Scaggs noted that neither Staff nor the Intervenors contested the proposal. Artesian observed that Staff's expert, Mr. Frank Radigan, opined that the Company's proposed rate structure is reasonable and will "give the customer the price signal to conserve". *See* Appendix B at Hearing Ex. 18 at p. 9 (Pages 8-10 of Mr. Radigan's testimony is attached to Appendix B as Exhibit C).

B. ARTESIAN'S TARIFF PROPOSALS IN SUPPLEMENTAL TESTIMONY

Regarding the tariff changes proposed by the Company in its supplemental testimony, Staff's position is that they should not be considered or approved in this docket. Staff contends the Company presented scant evidence, if any, on these proposed tariff changes. Staff argues that that the inclusion of the tariff changes in it supplemental testimony and the fact that the changes were not vetted to Staff's satisfaction demonstrates that "the Company has failed to meet its burden of proving that these tariff changes are just and reasonable." Appendix 1 at p. 2; see 26 *Del.C.* § 307. The tariffs in question concern:

(1) Charging customers for blocked access at the time meters are read;

(2) Increased security deposits for certain customers; and

(3) Increased charges for turning customers on during normal business hours and after hours.

In addition, Staff argues that the Company's inclusion of these tariff proposals in its Supplemental testimony violates Regulation 1002 *Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission* in Part A (Rate Increase Applications - Major Utilities) at Section 1.3.1.3. This Section provides that modifications in the test period data for known and measurable changes in rate base, expenses, or revenues may be included in testimony at any time before rebuttal evidence is filed.[4]

Artesian contends that Staff cannot argue it had no knowledge of the tariff proposals because its Supplemental Testimony was filed in July 2008 and Staff's witness, Mr. Frank Radigan, stated in his direct testimony that he reviewed the Company's work papers to determine if "all of the proposed fees in the Company's tariff are cost based and are allowed under Delaware law." Hearing Ex. 18 at p. 10. Mr. Radigan found all

---

[4] Section 1.3 of Regulation 1002 *Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission* pertains to the filing of testimony and exhibits and provides at 1.3.1.1:

> 1.3.1.3 it is in format consistent with such test period.
>
> Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility at any time prior to its filing of rebuttal evidence; provided, however, that if any party makes timely objection to the proffered modifications, such objections shall be promptly presented to the Commission, the Presiding Officer or Hearing Examiner for a decision on due consideration of the parties' respective positions. For purposes of section 1.3, an objection shall be timely if made within five (5) business days of the utility's proffer of modifications.
>
> Notwithstanding anything to the contrary in 1.3, the Commission, Presiding Officer or Hearing Examiner may permit the utility to offer in evidence the modifications contemplated hereunder simultaneously with the filing of rebuttal evidence, where extraordinary circumstances and the interests of justice so warrant.

of the Company's proposed tariff changes to be "just and reasonable." *Id.* In addition, Mr. Radigan specifically recommended that the proposed fees for turn-ons and shut-offs and blocked access to the curb valve "should be accepted." *Id.* Artesian argues that Staff neither presented any testimony at the evidentiary hearing nor any argument in its post-hearing briefing concerning the proposed tariff changes. Appendix 2 at pp. 4-5. Further, Artesian notes that Staff has not provided any explanation why the issues it now raises were not raised before the record closed. Appendix B at p. 5.

Artesian contends that it would be severely prejudiced if the record were now opened. Appendix B at p. 6. Artesian argues that it has expended considerable time and resources for this case. It contends that it would be unfair at this stage to require it to conduct further discovery, draft, and file additional testimony and brief additional legal arguments. *Id.* In addition, Artesian notes that opening the record now would send a dangerous signal to litigants that after the record has been closed a party could seek to assert new legal arguments.

Further, Artesian observes that Staff proffers no reason that these issues were not raised before the record closed. Appendix B at p. 5. Artesian notes that the tariffs do not constitute "newly discovered evidence." Staff was aware of the tariff changes since they were filed on July 11, 2008.

C. THE INTERVENORS

The Division of the Public Advocate by its counsel, Kent Walker, agreed (albeit reluctantly) with the Company regarding the motion to open the record. Tr. 572.

General Motors did not state a position on these issues, but it noted that the Commission has ongoing regulatory oversight for these issues. Tr. 573-574.

Mr. Glenn Kenton, counsel for Christiana Care, noted that he respected the positions of both Staff and Artesian. However, he further observed that this matter needed to come a decision and that the Commission could examine the matters raised in Staff's motion in the future if it so desired. Tr. 574.

DISCUSSION

GENERAL

At the oral argument on Staff's motion, Staff Counsel James Mc. Geddes, showed substantial candor, grace, and integrity in forthrightly admitting that Staff should have contested these

issues during the course of the proceeding. Tr. 551. However, Mr. Geddes emphasized that his concern at the present time was to demonstrate that Staff's failure to object to these issues regarding the new water meters, the billing system, and the three tariffs contained in supplemental testimony should not be construed as a waiver of the issues. Tr. 551. In fact, Mr. Geddes stated:

> HEARING EXAMINER PRICE: Mr. Geddes, just a second.
>
> That being said, what is Staff's reason for the delay in bringing that to my attention?
>
> MR. GEDDES: I don't have a reason. I don't have an excuse, and I'm not going to sit and here and try to make one up. We missed it. We made a mistake. Not a mistake, but we missed seeing it.
>
> A lot of testimony, a lot of analysis, various people doing it, and it just slipped through the crack. I can't say that we're happy about it. I'm not happy being here taking your time and the company's time. But it's an important process issue.
>
> From a monetary viewpoint, I don't think it's material. But from a process issue, just say hypothetically, if Staff did not make this position clear in this record, this utility, or any other utility could say, Oh, well, we now have an opportunity to supplemental testimony and present new ideas, new tariff changes. This is bigger than this case..
>
> And irrespective of your ruling with regard to this, I want to make clear on this record, and I will make the same observation before the Commission, that it is Staff's position that this type of new modification is not appropriate in supplemental testimony. That's our position. Now, obviously, people can disagree whether it's new or not, but that's our position. So, I want to make clear that that's a process issue.

Tr. 552-553.

Mr. Geddes acknowledged that bringing this request to open the record concerned more about preserving Staff's ability to question Artesian's proposal in future proceedings than about reforming the current posture of the instant case.

Further, Mr. Geddes admitted that if Staff had not raised these issues at this time there would be minimal effect on the costs and expenses or the revenue sought to be obtained from Artesian's rate request.

> HEARING EXAMINER PRICE: Now, let me ask you a question.
>
> What changes if you had never brought this up, it went on, it was missed, what would be the material effect on the case, if it never had been brought up at this time?

MR. GEDDES: As I believe I alluded to, I don't think from a monetary viewpoint or revenue viewpoint, there is materiality.

Tr. 553-554.

Consequently, it appears that Staff's argument further supports the conclusion that this motion was made in the spirit of place-saving rather than an imperative need grounded in the public interest to conduct further critical discovery and investigation of the issues.

A. QUARTERLY vs. MONTHLY BILLING

I have carefully reviewed Staff's arguments concerning its need to open the record to examine Artesian's proposal to move from quarterly billing to monthly billing. I find that the reasons advanced are not sufficiently compelling to warrant halting the progress of this case which is now ripe for decision. Artesian's monthly billing proposal was in no way a surprise to Staff. Staff had ample time to investigate and consider this proposal.

The Company's Application filed on April 22, 2008, over a year ago, clearly states that Artesian plans to invest $1.3 million for installation of Automatic Meter Reading technology for its 8200 customers south of the C&D Canal. Application at ¶ 8. Staff could not have been put on more notice of the proposal. It was stated in the eighth paragraph of the Application. The only way Staff could have missed this proposal is to admit that it did not read the Application at all, which clearly is not the case.

Further, Artesian's expert, Richard S. Minch, submitted prefiled testimony (which was adopted by Artesian's Chief Financial Officer David B. Spacht) that identified where the cost recognition for the change to monthly billing was found in the schedules submitted as part of the Application. Mr. Spacht attended and testified at the evidentiary hearing as well as Staff's expert Mr. Radigan and Staff Counsel, Mr. Geddes. *See* Evidentiary Hearing Ex. 32. The only credible explanation that Staff could advance that it did not know of the monthly billing proposal would be to state that it did not read the testimony filed by the parties in this case, which is clearly not true.

In addition, during discovery Artesian provided the parties an internal memorandum setting forth the Company's rationale for moving to monthly billing. This memorandum provided an explanation of the potential cost implications of the proposal to customers. See DPA-124, DPA-226 and GM-2-25.

However, Staff's argument is unfortunately disingenuous because it ignores the fact its own Staff's expert, Mr. Frank

Radigan, spoke to the move from quarterly to monthly billing in his testimony filed on September 29, 2008. Mr. Radigan acknowledged the Company's reform of its rate categories to accommodate monthly billing, and asserted that the Company's proposed rate structure is reasonable and will "give the customer the price signal to conserve". Appendix B, (Pages 8-10 of Mr. Radigan's testimony is attached as Exhibit C).

In this case, it is important to consider the timeline of the filings in this case:

Artesian's Application was filed April 22, 2008.

Artesian's Expert, Richard S. Minch, filed testimony with the original Application on April 22, 2008.

David B. Spacht filed supplemental testimony on July 11, 2008 adopted Richard S. Minch's original testimony of April 22, 2008.

Staff's Expert, Frank W. Radigan, filed testimony on September 29, 2008.

Artesian's Rebuttal Testimony filed on October 31, 2008

Evidentiary Hearing held on December 8 and 9, 2008.

The above time-line convincingly demonstrates that Staff had more than five months to propound additional discovery on the Company's proposal to implement monthly billing. Further, it had at least seven (7) months before the evidentiary hearing to raise any problems it had with the proposal. Moreover, after discovery, Staff's expert concluded that the Company's proposal to implement monthly billing was reasonable.

While the facts do not support Staff's requested relief on this issue, neither does the law. In its response to this request, Artesian cited the decision of the Hearing Examiner in PSC Docket No. 01-194, *In re Delmarva Power & Light Co.*, HE Report at ¶ 54, adopted by the Commission in Order No. 5941 at ¶ 19 ("A party who raises procedural problems needs to do so when such problems may be corrected or else suffer the consequences of having its silence deemed consent to the procedures.")(*See* Excerpts at Appendix B, Exhibit D.) It is well-settled in this jurisdiction that a party who fails to timely raise an objection to opening the record to conduct discovery waives the objection. Most importantly, Staff has no credible reason for failing to make this request earlier. Staff's request to reopen the record for discovery at this stage is long past and waived.

B. ARTESIAN'S TARIFF PROPOSALS IN SUPPLEMENTAL TESTIMONY

Once again, Staff's objection to Artesian's tariff proposals lacks merit. As stated previously, Artesian filed its supplemental testimony on July 11, 2008. Staff never made an objection to the tariff proposal until the instant motion was made on or about *April 16, 2009*. Section 1.3.1.3 of 1002 *Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission clearly provides that a timely objection must be filed* "within five (5) business days of the utility's proffer of modifications." Staff did not make its objection in five days or five months. The parties to the case conducted discovery on these proposals and concluded that they did not warrant being contested. Surely, at this late date, Staff cannot sincerely believe its objection is meritorious.

Further, Staff cannot argue that it did not review these proposals. Staff's expert, Frank Radigan, stated in direct testimony that he reviewed the Company's work papers to determine if "all of the proposed fees in the Company's tariff are cost based and are allowed under Delaware law." Hearing Ex. 18 at p. 10. Mr. Radigan found all of the Company's proposed tariff changes to be "just and reasonable." *Id.* In fact Mr. Radigan specifically stated that the proposed fees for turn-ons and shut-offs and blocked access to the curb valve "should be accepted." *Id.* At no time did Staff raise the slightest objection to the tariff proposals. Neither the testimony at the evidentiary hearing nor the argument in Staff's post-hearing briefing objected to the tariff proposals, either with respect to the procedure used to introduce the changes or the reasonableness of the changes. Consequently, I decline to disrupt the process for consideration of Artesian's tariff proposals that have been reviewed, considered, and not objected to by Staff. I further observe that the Commission has continuing jurisdiction in this matter and Staff is free to initiate another case on these issues or at a later date begin an investigation on these issues if the circumstances warrant it because of abuses or customer complaints.

CONCLUSION

For the reasons stated above, I decline to grant Staff's motion to open the record for further discovery and consideration of Artesian's proposal to move to monthly billing. In addition, I deny Staff's request to strike the record of Artesian's tariff proposals regarding:

(1) Charging customers for blocked access at the time meters are read;

(2) Increased security deposits for certain customers; and

(3) Increased charges for turning customers on during normal business hours and after hours.

Further, I find that reopening the record at the present time would unduly delay resolution of the above-captioned proceeding, cause unnecessary costs for the parties, and unfairly prejudice the Company.

The record in this matter will remain closed.

Respectfully submitted,

Ruth Ann Price
Senior Hearing Examiner

APPENDIX A

Letter of James Mc. Geddes, Esquire to The Honorable Ruth Ann Price, dated 16 April 2009

ASHBY & GEDDES

ATTORNEYS AND COUNSELLORS AT LAW
500 DELAWARE AVENUE
P. O. BOX 1150
WILMINGTON, DELAWARE 19899

TELEPHONE
302-654-1888

FACSIMILE
302-654-2067

16 April 2009

VIA E-MAIL & U.S. MAIL

The Honorable Ruth A. Price
Senior Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Boulevard, Ste. 100
Dover, DE 19904

Re: *PSC Docket No. 08-96*

Dear Hearing Examiner Price:

I write to you in connection with some rate design issues that Staff seeks to have clarified in connection with the captioned matter. It has come to Staff's attention that the Company has proposed moving from a quarterly billing system to a monthly billing system. As I am sure Your Honor can appreciate, this has potential cost impacts on ratepayers, which impacts were not reviewed or analyzed by Staff, although they should have been. Because of the potential policy implications of such a dramatic change, and the fact that it could have cost implications for the Company, as well as its customers, Staff seeks an opportunity to further review this issue prior to having this matter brought before the Commission for decision.

In addition, it has come to Staff's attention that Artesian proposed several tariff changes in its supplemental testimony. Again as I am sure Your Honor is aware, the purpose of the supplemental testimony to address only updates in the test period information that originally was filed on a partially forecasted basis. *See Minimum Filing Requirements for all Regulated Companies Subject to the Jurisdiction of the Public Service Commission*, Part A § .C. Historically, supplemental testimony has not been used to bring new proposals into a rate filing as Artesian did in this case. The three issues which have drawn Staff's attention are:

(1) Charging customers for blocked access at the time meters are read;
(2) Increased security deposits for certain customers; and
(3) Increased charges for turning customers on during normal business hours and after hours.

Regarding the tariff changes proposed by the Company in its supplemental testimony, Staff's position is that they should not be considered or approved in this docket. In fact, there was limited or no evidence presented by the Company on these proposed tariff changes. Thus, in addition to procedural irregularity by which the changes were proposed, the Company has failed to meet its burden of proving that these tariff changes are just and reasonable.

With regard to the first issue, Staff is requesting permission to file on an expedited basis limited discovery on the potential cost savings associated with the proposed change from quarterly to monthly billing, as well as to understand the Company's long-term proposals regarding automatic meter reading and potential roll-out of monthly billing to its entire customer base. Upon receipt of that information, Staff would propose to file limited supplemental testimony either approving or detailing any potential concerns Staff has with regard to the impact this change may have in billing methodology.

In proposing this additional inquiry, Staff seeks to bring the issue on a more informed basis to the Commission, but not to delay Your Honor's consideration of the other numerous issues that have been briefed and are before you at the present time.

I am sure that Your Honor will want to hear from the Company on Staff's request, and, hopefully, some expedited process could be agreed to so that the matter can be fully reviewed prior to the Commission's decision in this matter.

Respectfully submitted,

James McC. Geddes

JMcCG:dlb
cc: Service List (via e-mail)

APPENDIX B

Letter of Michael Houghton, Esquire to The Honorable Ruth Ann Price, dated April 21, 2009

Anand
Ruth
Katie
Jack
Heidi

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

302 658 9200
302 658 3989 FAX

2009 APR 21 PM 3:39

DELAWARE

April 21, 2009

BY HAND DELIVERY AND E-MAIL

The Honorable Ruth Ann Price
Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Re: In the Matter of the Application of Artesian Water Company, Inc., PSC Docket No. 08-96: Delaware Public Service Commission Staff's April 16, 2009 Request to Reopen the Record

Dear Hearing Examiner Price:

We are writing in response to Delaware Public Service Commission Staff's ("Staff") April 16, 2009 letter to you seeking to reopen the record in PSC Docket No. 08-96 regarding Artesian Water Company's (the "Company") proposal to implement monthly billing and proposed tariff changes to certain non-recurring charges. Staff's letter request to reopen the record comes almost a full year to the day after the Company's application for an increase in water rates (the "Application") was filed with the Commission, four months after the evidentiary record was closed, and more than a month after Staff submitted its answering brief in this proceeding. Staff's request to reopen the record is not premised on any changed circumstances or newly discovered evidence, and directly contradicts the testimony of Staff's own expert. Staff's request to reopen the record has no basis in the law or in the facts of this case. It should be denied.

In the April 16 letter, Staff cites no legal basis for their request to reopen the record. The evidentiary record in this proceeding was closed on December 9, 2008 and Staff's answering brief was filed on March 3, 2009. Consequently, we must assume that Staff's request is a petition to reopen the record pursuant to Rule 34 of the Delaware Public Service Commission Rules of Practice and Procedure. Pursuant to Rule 34, any party desiring further hearing upon supplemental evidence may file a petition setting forth "the grounds to reopen the record, a description of additional evidence to be introduced, and a statement of the reasons why such evidence was not introduced prior to the close of the record." DELAWARE PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE, Rule 34 (1999). Staff did not and cannot provide any reasonable explanation why the issues raised in their request were not raised prior to

the close of the record or even in their answering brief. Staff obviously has waived any right to conduct additional discovery or assert new legal arguments.

1. Monthly Billing

Staff first requests to reopen discovery on Artesian's proposal to implement monthly billing for certain Artesian customers, followed by the filing of supplemental testimony (and presumably argument on those issues)[1] in the hopes of finding something that either approves or details "any potential concerns Staff has with regard to the impact this change may have in billing methodology." Staff's April 16, 2009 Letter at p. 2 (emphasis added). Such a post-hearing, post-briefing fishing expedition has no basis in law as Staff has waived any right to additional discovery on this issue.

Artesian's proposal to go to monthly billing for its customers south of the C&D canal was entered into the record of this proceeding in Artesian's original April 22, 2008 application for an increase in water rates (the "Application").[2] In Mr. Minch's prefiled testimony, which was filed concurrently with the Application and was admitted into the record as Hearing Exhibit 32, Mr. Minch noted where the cost recognition for the change to monthly billing was reflected in the schedules submitted as part of the Application, and stated that the Company believed any additional costs associated with the change would be offset by improvements in cash working capital, due to the reduction in lag time in receipt of payments.

---

1 It is not entirely clear what process Staff is requesting, but the Company would have to be afforded the opportunity to respond to any prefiled supplemental testimony by Staff. That supplemental testimony would have to be admitted into the record by a witness and that witness would have to be subjected to cross-examination. Therefore, there would need to be another hearing and additional briefing – a wholly unwarranted process that should not be imposed at this late stage in this case.

2 In the Application, Artesian stated that it planned to invest $1.3 million to engage the services of a third party provider to equip all of Artesian's residential customers south of the C&D Canal – approximately 8200 customers – with Automatic Meter Reading ("AMR") technology. Application at ¶ 8. Once the implementation of the radio read meter system was completed (which it was prior to September 30, 2008), Artesian would initiate monthly billing for all customers located south of the C&D Canal. *Id.* (Paragraph 8 of the Application is attached hereto as Exhibit A).

H. Ex. 32 at p. 30 (Pages 29 and 30 of Mr. Minch's prefiled Testimony are attached hereto as Exhibit B).[3] In addition, the Company's revised tariff submitted as part of the Application showed modifications to corresponding residential rate blocks in order to accommodate monthly and quarterly billing.[4]

Staff had ample opportunity to investigate the impact of monthly billing on the Company's billing methodology during the nearly five months of discovery in this case, and the Parties to this proceeding did propound discovery on the Company's monthly billing proposal. These requests included the Company providing to all of the Parties an internal memo regarding the Company's rationale for moving to monthly billing, an explanation of the potential cost implications of such a proposal to customers, and the date the Automatic Meter Reading technology was in service.[5] No party presented any evidence, either prefiled testimony or any evidence at the hearing, that the Company's proposal would have an adverse impact on ratepayers or was otherwise not just and reasonable. To the contrary, Staff's expert, Mr. Frank Radigan, acknowledged the Company's modifications to the rate blocks to accommodate monthly billing, and opined that the Company's proposed rate structure is reasonable and will "give the customer the price signal to conserve". H. Ex. 18 at p. 9 (Pages 8-10 of Mr. Radigan's testimony is attached hereto as Exhibit C).

---

3 As in the Company's Post-Hearing Opening Brief, references to the prefiled testimony and other exhibits introduced at the evidentiary hearings in this docket are cited herein as ("H. Ex. __ at p.__").

4 Artesian's proposal to move to monthly billing was first raised as part of the Company's 2006 filing with the Commission to satisfy the Water Supply Self-Sufficiency Act of 2003. See PSC Docket 06-221. In a January 29, 2007 report issued by Staff's expert retained to evaluate the Company's Self-Sufficiency Filing, Staff's expert recommended that the Company move to monthly billing. Recommendation #2 of January 29, 2007 Report by Soheil Gharebaghi in PSC Docket 06-221 at p. 15, available at http://depsc.delaware.gov/water/06221staffmemo.pdf. In a July 2, 2007 memorandum to the Chair and the Commissioners, Staff noted that monthly billing "would be an effective tool in the promotion of water conservation" but Staff preferred to examine the issue in the Company's next rate case. July 2, 2007 Memo by Andrea Maucher in PSC Docket 06-221 at p. 5, available at http://depsc.delaware.gov/water/06221staffmemo.pdf. The Company followed Staff's directive and proposed moving to monthly billing for the Company's customers below the C&D canal in this rate case.

5 See, e.g., DPA-124, DPA-226 and GM-2-25. As the rationale for moving to monthly billing and the costs associated with the AMR program were not contested by any of the Parties to this proceeding, no party moved the admission of these data requests into the record. The Company will not now unilaterally expand the record for purposes of responding to Staff's request, but if Your Honor would like to see any of the discovery requests and the Company's responses on this issue or the tariff change issue, the Company will gladly provide such information prior to the hearing on Staff's petition.

Staff had more than five months to propound additional discovery on the Company's proposal to implement monthly billing. After discovery, Staff's expert ultimately reached the conclusion that the Company's proposal to implement monthly billing was reasonable. If Staff believed additional discovery was warranted on the issue, Staff should have raised an objection at the close of the discovery period, Staff chose not to do so. Accordingly, Staff's request to reopen discovery at this stage of the proceeding is untimely and waived. *See,* PSC Docket No. 01-194, *In re Delmarva Power & Light Co.*, HE Report at ¶ 54, adopted by the Commission in Order No. 5941 at ¶ 19 ("A party who raises procedural problems needs to do so when such problems may be corrected or else suffer the consequences of having its silence deemed consent to the procedures.")(Relevant Excerpts are attached hereto as Exhibit D).[6] As a result, Staff has no grounds to request reopening the record regarding the Company's proposal to implement monthly billing.

2. Proposed Tariff Changes in the Supplemental Testimony

Staff also uses its April 16 letter to attempt to make legal arguments it failed to raise in its post-hearing answering brief. Staff now contends that the proposed tariff changes contained in the Company's supplemental testimony were (1) procedurally irregular and (2) not just and reasonable. Staff admits it became aware of the Company's proposed tariff changes when the Company filed its Supplemental Testimony on July 11, 2008 (Pages 4-6 of the Supplemental Testimony are attached hereto as Exhibit E). As with the monthly billing issue, discovery was propounded on the tariff changes and the Company provided Staff and the other Parties all work papers supporting the Company's proposed changes.[7]

Staff's position on the tariff changes, as articulated in its April 16 letter, directly contradicts its position at the hearing, as articulated by its witness, Mr. Frank Radigan. Mr. Radigan, stated in his direct testimony that he reviewed the Company's work papers to determine if "all of the proposed fees in the Company's tariff are cost based and are allowed under

---

[6] In the *Delmarva* decision, the Hearing Examiner concluded that a party who argued that it did not have an adequate opportunity to develop the record in opposing a proposed settlement had waived its argument when it had the opportunity to ask for further discovery and did not, and the party ultimately presented its position regarding the proposed settlement through supplemental direct testimony. *See,* PSC Docket No. 01-194, *In re Delmarva Power & Light Co.*, HE Report at ¶ 54.

[7] See, e.g., PSC-RD-3 (turn-on/shut-off charges), PSC-RD-15 (blocked access and security deposit). These discovery requests asked for the Company's work papers and legal bases supporting the same proposed tariff changes as to which Staff now claims there was limited or no evidence presented by Artesian. Staff cannot credibly argue that because the aforementioned data requests were not entered into the record, there is no evidence supporting these proposed changes, when Staff's own expert testified that the tariff changes were "just and reasonable", there was no dispute regarding the changes, and thus, there was no need for Artesian to create a record on an issue in no way in dispute.

Delaware law." H.Ex. 18 at p. 10. Mr. Radigan found all of the Company's proposed tariff changes to be "just and reasonable." *Id.* In addition, Mr. Radigan specifically recommended that the proposed fees for turn-ons and shut-offs and blocked access to the curb valve "should be accepted." *Id.* There was no testimony at the hearing and no argument in Staff's post-hearing briefing regarding the proposed tariff changes, either with respect to how the changes were raised procedurally or their reasonableness.

The Company's proposed tariff changes remain the same as those filed in July 2008. If Staff had a legal argument that the Company's proposed tariff changes to certain non-recurring charges were (1) procedurally irregular and/or (2) not just and reasonable, it should have raised those arguments in its prefiled testimony, at the hearing or in the least in its answering brief. It did not, and therefore Staff's arguments are waived. *See, In re IBP, Inc. S'holders Litig.*, 789 A.2d 14, 62 (Del.Ch. 2001)(Acquiring corporation waived any arguments that additional changes in restated financials of acquired corporation were material, where acquiring corporation did not argue materiality in its opening post-trial brief). Accordingly, Staff has no grounds to reopen the record with respect to the proposed tariff changes.[8]

3. Staff Has No Explanation Why These Issues Were Not Raised Prior to the Close of the Record

Staff's April 16 letter fails to offer any explanation as to why none of these issues were raised prior to the close of the record. Staff's vague, equivocal statement that these issues "have come to Staff's attention" (Staff's April 16, 2009 Letter, p. 1, at ¶¶ 1 and 2) is painfully inadequate to justify reopening the record now.

The monthly billing and proposed tariff changes do not represent newly discovered evidence. Evidence is not "newly discovered" if the party proffering the evidence had the opportunity, but failed, to uncover or adduce the evidence at or before trial. *Fitzgerald v. Cantor*, 2000 WL 128851 at *2 (Del. Ch.)(Attached hereto as Exhibit F); *Proctor & Gamble Co. v. Paragon Trade Brands, Inc.*, 15 F. Supp. 2d 406 (D. Del. 1988). Where late proffered evidence is not newly discovered, the offering party must show that the party's failure to offer the evidence at trial was the result of a mistake, inadvertence, surprise or excusable neglect. See, e.g., Court of Chancery Rule 60(b) and *Poole v. N.V. Deli Maatschappij*, 257 A.2d. 211, 243-244

[8] Although the Company has only done preliminary research regarding the merits of Staff's argument regarding the procedural correctness of the Company's proposed changes to non-recurring charges in the Company's tariff, the Company strongly disagrees with Staff on the merits of Staff's procedural argument. The proposed changes Staff complains about are increases to non-recurring charges that would arguably not even require the filing of a rate case. *See Minimum Filing Requirements for all Regulated Companies Subject to the Jurisdiction of the Public Service Commission*, Subparagraph 3 of "General Rate Case Defined". That the Company chose to include these in their rate case where such changes could be tested, reviewed and ultimately opined upon does not make them untimely.

(Del. Ch. 2005). The type of excusable mistake contemplated does not include a tactical mistake of competent counsel made in the course of the conduct of a case entrusted to his discretion. *See TWA v. Summa Corp.*, 394 A.2d 241, 246 (Del. Ch. 1978).[9] Here, Staff freely admits that it does not have any newly discovered evidence, and remarkably, wants permission to look for additional evidence through discovery conducted after the close of the hearing and completion of briefing.

The Company's proposal to implement monthly billing and the proposed tariff changes have been part of the record in this case, at the very latest since before the beginning of discovery. Staff's own direct testimony demonstrates that the monthly billing and proposed tariff were part of the case and that Staff reviewed the proposed changes and found them acceptable. Staff apparently has had a change of heart or made a mistake. Neither is a valid reason to reopen the record.

4. Granting Staff's Request Would Prejudice the Company, Waste Judicial Resources and Set a Dangerous Precedent

In addition to failing to provide any basis that could even arguably justify reopening the record, Staff's request should be denied because granting it would greatly prejudice the Company. The Company has expended tremendous time and resources to get to this point of the rate case. Allowing Staff (1) to supplement the record by reopening discovery and (2) to make new legal arguments at this stage of the proceeding would force the Company take further discovery, draft and file additional supplemental testimony, brief additional legal arguments, and possibly prepare for another oral argument. Granting Staff's petition at this late date would unfairly prejudice the Company. *See Carlson*, 925 A.2d at 521; *Fitzgerald*, 2000 WL 128851 at *2 (concluding that allowing supplementation of the record would be "unfairly prejudicial to [the non-movants] in that they would now be forced to galvanize yet another major effort to gather evidence to explain their view of the inferences to be drawn from the [proffered evidence] if it were admitted").

Your Honor has already presided over a two day evidentiary hearing, reviewed extensive pre-trial testimony and transcripts, and reviewed the extensive briefing of the parties. This rate case is ready for decision. Granting Staff's motion would waste judicial resources, which are already under significant pressure at the Commission.

---

[9] While Rule 60 addresses post judgment application of a motion for reargument, the Delaware Courts have applied Rule 60 to similar motions to supplement the record based on similar policy considerations. *See, e.g., Cantor v. Fitzgerald*, 2000 WL 128851 at *2 (Del.Ch.)(Attached hereto as Exhibit F); *Carlson v. Hallinan*, 925 A.2d 506, 519-520 (Del.Ch. 2006); and *Sutherland v. Sutherland*, 2008 WL 571253 at *2 (Del.Ch.)(Attached hereto as Exhibit G).

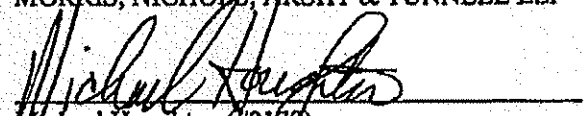
Finally, granting Staff's petition would set a dangerous precedent that after the close of the record, and after the submission of post-hearing briefing, any party – without articulating a clear reason why – can assert new legal arguments and ask to reopen discovery on issues that the party either chose to ignore for tactical reasons or simply overlooked. Either way, Staff should not be allowed to restart this proceeding at the discovery stage on issues that Staff investigated, filed direct testimony regarding (and in such testimony opined that the proposed changes were just and reasonable), participated in the hearing and filed their answering brief without even a notation of either issue, and only now, one month after the case has gone to Your Honor for a decision, without any factual or legal basis, decided that it wants to investigate or contest.

* * *

For the reasons stated above, Staff's request should be denied.

Respectfully Submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP



Michael Houghton (#2179)
R. Judson Scaggs, Jr. (#2676)
Geoffrey A. Sawyer (#4754)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
Attorneys for Artesian Water Company, Inc.

April 21, 2009

Enclosures

cc: 08-96 Service List (via E-mail)

2853035.4

Service List
PSC Docket No. 08-96 (Artesian Water Company, Inc.)

Hearing Examiner Ruth A. Price Delaware Public Service Commission 861 Silver Lake Blvd, Suite 100 Dover, DE 19904 Tele: 302-736-7534 Fax: 302-739-5258 E-mail: ruth.price@state.de.us	**PSC Staff** Karen Nickerson, Secretary Delaware Public Service Commission 861 Silver Lake Blvd, Suite 100 Dover, DE 19904 **Original & 10 copies of formal filings. No fax or electronic service.**
PSC Staff Jack Schreyer, Public Analyst Heidi Wagner , Public Analyst Delaware Public Service Commission 861 Silver Lake Blvd, Suite 100 Dover, DE 19904 Schreyer Tele: 302-736-7550 Wagner Tele: 302-736-7566 Fax: 302-739-5258 E-mails: jack.schreyer@state.de.us. heidi.wagner@state.de.us	**PSC Staff Counsel** James McC. Geddes, Esquire Brooke Leach, Esquire Ashby & Geddes 222 Delaware Avenue, 17th Floor Wilmington, DE 19801 **Mail Delivery** P.O. Box 1150 Wilmington, DE 19899 Tele: 302-654-1888 Fax: 302-654-2067 E-mail: JGeddes@ashby-geddes.com Bleach@ashby-geddes.com
PSC Staff Consultant Ralph Smith Larkin & Associates PLLC 15728 Farmington Road Livonia, MI 48154 Phone: 734-522-3420 Fax: 734-522-1410 E-mail: RSmithLA@aol.com	**PSC Staff Consultant** Frank Radigan Hudson River Energy Group 237 Schoolhouse Road Albany, NY 12203 Phone: 518-452-2585 Fax: 5128-452-2684 E-mail: FRadigan@aol.com

PSC Staff Consultant

David Parcell
Technical Associates, Inc.
1051 E. Cary St., Ste. 601
Richmond, VA 23219
Phone: 804-644-4000
Fax: 804-644-2977
E-mail: David.Parcell@tai-econ.com

Division of Public Advocate

G. Arthur Padmore, Public Advocate
Michael Sheehy, Deputy Public Advocate
Division of the Public Advocate
820 N. French Street, 4th Floor
Wilmington, DE 19801
Padmore: 302-577-5077
Sheehy: 302-577-5078
Fax: 302-577-3297

E-mail: arthur.padmore@state.de.us
Michael.Sheehy@state.de.us
Kishon.williams@state.de.us

Public Advocate Counsel

Kent Walker, Esquire
Deputy Attorney General
Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
Phone: 302-577-8306
Fax: 302-577-6630

E-mail: kent.walker@state.de.us

Commission Advisor

Andrea Maucher
Public Analyst
Delaware Public Service Commission
861 Silver Lake Blvd, Suite 100
Dover, DE 19904
Tele: 302-736-7547
Fax: 302-739-5258

E-mail: andrea.maucher@state.de.us

DPA Consultant

James D. Cotton
Andrea C. Crane
The Columbia Group, Inc.

U. S. Mail Should Be Sent To:
PO Box 810
Georgetown, CT 06829

Overnight mail should be delivered to:
The Columbia Group, Inc.
199 Ethan Allen Highway
2nd Floor
Ridgefield, CT 06877

Tele: 203-438-2999
Fax: 203-
E-mail: CTColumbia@aol.com

Artesian Water Company Counsel	Artesian Water Company
Michael Houghton, Esquire Geoffrey Sawyer III, Esquire R. Judson Scaggs, Jr., Esquire Morris, Nichols, Arsht & Tunnell 1201 N. Market Street P.O. Box 1347 Wilmington, DE 19899 Tele: 302-658-9200 Sawyer Tele: 302-351-9417 Fax: 302-658-3989 Sawyer Fax: 302-498-6221 E-mail: mhoughton@mnat.com gsawyer@mnat.com bgrier@mnat.com rscaggs@mnat.com	David B. Spacht Artesian Water Company, Inc. 664 Churchmans Road Newark, DE 19702 Tele: 302-453-6912 Fax: 302-453-6957 E-mail: dspacht@artesianwater.com dburns@artesianwater.com cmcdowell@artesianwater.com
Artesian Water Company Consultant	**Artesian Water Company Consultant**
Paul R. Herbert Constance Heppenstall John J. Spanos Gannett Fleming, Inc. 207 Senate Avenue Camp Hill, PA 17011 Mail Delivery: P.O. Box 67100 Harrisburg, PA 17106-7100 Tele: 717-763-7211 Fax: 717-763-4590 E-mail: pherbert@gfnet.com cheppenstall@gfnet.com jspanos@gfnet.com	Pauline M. Ahern AUS Consultants 155 Gaither Drive, Suite A Mt Laurel, NJ 08054 Tele: 856-234-9200, Ext 204 Fax: 856-234-8371 E-mail: pahern@ausinc.com

Christiana Care Health Services Counsel	Christiana Care Health Services
Glenn C. Kenton, Esquire Richards, Layton & Finger, P.A. One Rodney Square 920 North King Street Wilmington, DE 18901 Tele: 302-651-7726 Fax: 302-651-7701 E-mail: Kenton@rlf.com	Robert A. Mulrooney Vice President, Facilities and Services Christiana Care Health Services 4755 Ogletown-Stanton Road Newark, DE 19713 Tel.: (302) 733-3994 Fax.: (302) 733-3749 E-mail: rmulrooney@christianacare.org
General Motors Corporation Counsel	**General Motors Corporation In-House Counsel**
Louis R. Monacell, Esquire Christian & Barton, L.L.P. 909 East Main Street, Suite 1200 Richmond, VA 23219-3095 Tel.: (804) 697-4100 Tel.: (804) 697-4120 Fax.: (804) 697-4112 E-mail: lmonacell@cblaw.com mquinan@cblaw.com	Laura L. Romeo, Esquire General Motors Legal Staff Environmental & Vehicle Regulation MC 482-C24-D24 300 Renaissance Center P.O. Box 300 Detroit, MI 48265-3000 E-mail: (313) 665-4876 Fax: (248) 267-4391 E-mail: laura.romeo@gm.com
GM Consultants Michael Gorman Magdelena Ackenhausen Brubaker & Associates, Inc. PO Box 412000 St. Louis, MO 63141-2000 *Overnight mail should be delivered to:* 16690 Swingley Ridge Road, Suite 140 Chesterfield, MO 63017 Main: (636) 898-6725 Fax: (636) 898-6726 E-mail: mgorman@consultbai.com E-mail: mackenhausen@consultbai.com	Ernie Harwig, Consultant Brubaker & Associates, Inc. 57 Cedar Summit Road Asheville, NC 28803 E-mail: eharwig@consultbai.com Howard J. Woods, Jr., P.E Howard J. Woods, Jr. & Associates, L.L.C. 138 Liberty Drive Newtown, PA 18940-1111 Email: howard@howardwoods.com

EXHIBIT A

CK# 144152/162-9 DOCKET NO. 08-94
4.22.08 $100.RB

KN
CC
NS
JS
HW
ALLOM

RECEIVED
2008 APR 22 PM 2:46
DELAWARE PUBLIC SERVICE COMMISSION

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

302 658 9200
302 658 3989 FAX

GEOFFREY A. SAWYER, III
302 351 9417
302 498 6231 FAX
gsawyer@mnat.com

April 22, 2008

BY HAND DELIVERY

Mr. Bruce H. Burcat
Executive Director
Public Service Commission
861 Silver Lake Blvd.
Cannon Building, Suite 100
Dover, DE 19904

Re: In the Matter of the Application of Artesian Water Company, Inc., for a Revision of Rates, PSC Docket No. 08-XX.

Dear Mr. Burcat:

Enclosed for filing with the Public Service Commission ("Commission") are the original and ten copies of the Application of Artesian Water Company, Inc. For A Revision of Rates and accompanying exhibits in compliance with Section III.B.1 of the Minimum Filing Requirements which include: (1) a proposed revised tariff; (2) pre-filed testimony; (3) a form of proposed Public Notice; (4) the Briefing Sheet; (5) August 15, 2006 Prospectus; and (6) 2006 and 2007 SEC 10K Reports. Also included are copies of the Filing Cover Sheet, a check in the amount of $100.00 and a CD-ROM containing electronic copies of all filed documents. Two copies of all documents filed herewith have been caused to be served by hand upon the Division of the Public Advocate on this day.

Sincerely,

Geoffrey A. Sawyer, III (#4754)

cc: Ms. Karen J. Nickerson (By Hand)
Mr. G. Arthur Padmore, Esquire (By Hand)
Mr. David B. Spacht c/o Diane Burns (By Hand)

2300789

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION OF RATES (Filed April 22, 2008)	PSC Docket No. 08-____

APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION OF RATES

Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Telephone: (302) 453-6900
Facsimile: (302) 453-6957
E-mail: artesian@artesianwater.com

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Michael Houghton (#2179)
R. Judson Scaggs, Jr. (#2676)
Geoffrey A. Sawyer, III (#4754)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
E-mail: mhoughton@mnat.com

April 22, 2008

instance, the Company is constructing two new elevated storage tanks to provide for peak demands and fire protection on the Company's Clayton and Magnolia area systems. The Clayton elevated tank is a 500,000-gallon elevated tank that is scheduled to be in service by June 2008, while the Magnolia elevated tank is a One Million-gallon tank scheduled to be in service by July 2008.

7. In addition, the Company plans to spend more than $6 million to develop new sources of water supply and treatment. New treatment facilities at Beaver Creek, Heron Bay and Windsong Farms will provide the necessary treatment capacity and supply to Artesian's rapidly growing Kent and Sussex County customer base, as well as meet the water supply and fire protection needs for these communities, and in some cases, the water supply and fire protection needs of neighboring subdivisions.

8. Finally, Artesian plans to invest $1.3 million to engage the services of a third party provider to equip all of Artesian's residential customers south of the C&D Canal – approximately 8200 customers -- with Automatic Meter Reading ("AMR") technology. The installation of the AMR technology will allow for monthly billing for these customers, which brings water bills in line with all the other utility bills, and makes it easier for Artesian's customers to budget this expense and more accurately track their water usage – a stated goal of the PSC Staff's consultant in Artesian's self-sufficiency filing. Further, AMR greatly enhances Artesian's ability to collect the water usage data in a cost effective manner, and the technology contains a leak detection feature that will assist in identifying leaks earlier and minimizing lost water. Once the implementation of the radio read meter system is completed, Artesian will initiate monthly billing for all customers located south of the C&D Canal. As a result of this initiative, and as reflected in Artesian's proposed tariff, corresponding residential rate blocks

were modified to establish monthly and quarterly rate blocks in order to accommodate monthly and quarterly billing.

B. Artesian's Investment In Transmission And Distribution Projects Initiated At The Request Of State Or Local Governments.

9. During the test period, the Company plans to expend more than $4.5 million on projects initiated at the request of state and local governments for road and infrastructure improvements. These projects are in conjunction with projects initiated by the Delaware Department of Transportation or to meet the State Fire Marshall's fire protection requirements.

C. Artesian's Investments In The Construction Of New And Replacement Of Old Water Mains.

10. The Company also plans to spend more than $5 million to replace water mains and to construct new mains in previously unserved areas. First, the Company is continuing a major water main replacement program that focuses on areas with some of the worst histories of main breaks and failures. Under the program, Artesian is replacing old asbestos cement pipe, galvanized steel pipe, and unlined cast iron pipe, in order to reduce the frequency of main breaks and in turn the frequency of customer outages as well as in order to improve water service. In addition, the Company is installing new water mains in a variety of communities.

D. General Plant Projects.

11. The Company is requesting an increase in General Plant of close to $20 million during the test period. The largest contributor to the increase in plant – more than $14 million – is based on the Company's investment in its new 33,000 square-foot office building.

EXHIBIT B

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION OF RATES (Filed April 22, 2008)	PSC Docket No. 08-____

DIRECT TESTIMONY OF
RICHARD S. MINCH
ON BEHALF OF
ARTESIAN WATER COMPANY, INC.

Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Telephone: (302) 453-6900
Facsimile: (302) 453-6957
E-mail: artesian@artesianwater.com

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Michael Houghton (#2179)
R. Judson Scaggs, Jr. (#2676)
Geoffrey A. Sawyer, III (#4754)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
E-mail: mhoughton@mnat.com

April 22, 2008

resources for all. But, until a legislative and /or a regulator approach is provided that addresses this issue, this approach proposed by the Company addresses, in the interim, the problem of cost of service exceeding the low-income customer's ability to pay.

a. Tariff Qualifications –

i. Residential customers who meet the low-income criteria of 150% based on the Federal Poverty Level (FPL) will be eligible for the Low Income Rate.

ii. Customers must submit an application and provide documentation showing the gross household income for the previous year. Customers will be required to apply on an annual basis.

iii. Once a customer qualifies they must make timely payment on the discounted bills.

b. Rates for Service –

i. Eligible customers will be billed at 50% of the current Customer Charge.

ii. All other tariff charges will be charged at the prevailing rates.

Secondly, the Company would provide conservation assistance through education and information on low usage plumbing fixtures. This program would also establish a customer assistance fund for low-income customers experiencing a hardship in paying their water bill. The fund would be administered by a community-based organization and funded through donations from shareholders, employees and customers. Customers would have to meet set requirements in order to receive a one-time per year grant. Only customers who are not enrolled in the Low Income Rate are eligible to receive assistance through this fund.

Q. Are there any other changes that the Company is reflecting in its filing?

A. Yes, the Company has initiated a meter change-out program replacing standard meters with Automated meters for residential customers in Delaware south of the C&D canal. The Company believes that this initiative will assist customers in receiving more timely usage information and to help manage cash on a monthly basis for personal budgeting purposes. As a result of this initiative, the Company intends to begin monthly billing for these customers. The cost recognition in the filing for this change in billing is reflected in the Meter category in the T&D section of utility plant additions in rate base. The Company believes any additional costs associated with the change would be offset by improvements in cash working capital, due to the reduction in lag time in receipt of payments.

VII. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

Q. Please discuss Artesian's implementation of the DSIC and its relationship to this application.

A. On November 30, 2007, Artesian filed its application with the PSC to place into effect its DSIC charge of .46%, on January 1, 2008. The charge recognized $1,814,383 in net utility plant, placed in service between October 1, 2006 and October 31, 2007. Since this utility plant and equipment is included in this application and is subsequently included in the overall request for increase in the Company's revenue requirement, Artesian will discontinue applying the current .46% DSIC rate upon the effective date of the increase in rates, either temporary or permanent, proposed in this proceeding.

The amounts collected as a result of application of the DSIC will be subject to annual reconciliation, in accordance with Subchapter III, Chapter 1, Title 26 of the Delaware Code.

EXHIBIT C

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC., FOR AN INCREASE IN WATER RATES (FILED APRIL 22, 2008)	))))	PSC DOCKET NO. 08-96

DIRECT TESTIMONY OF

FRANK W. RADIGAN

ON BEHALF OF

COMMISSION STAFF

SUBJECT: COST OF ALLOCATION AND RATE DESIGN

September 29, 2008

In this case, the allocation moves the revenue responsibility towards the indicated cost of service but does not go all the way. Thus, the proposed allocation is based on both the results of the study and the judgment of the analyst. This is how it should be. We should consider but not unquestionably rely on the results of the study. To address the fact that Staff's proposed revenue requirement is approximately half of what the Company is requesting, I developed an index of how the increase was allocated by Mr. Herbert. I used that index to allocate Staff's recommended revenue requirement. The resultant allocation which is shown below continues to move costs toward the indicated cost of service while at the same time avoiding undue customer bill impacts.

Customer Classification	Pro Forma Revenues at Present Rates	Staff Proposed Revenues	Staff Proposed Increase	Percent Increase
Residential	$30,468,290	$34,359,020	$3,890,730	12.8%
All Other	$12,896,547	$14,360,643	$1,464,096	11.4%
GM/Christiana	$606,013	$681,052	$75,039	12.4%
Delaware Corrections	$385,819	$417,762	$31,943	8.3%
Middletown Sales for Resale	$405,209	$447,146	$41,937	10.3%
Private Fire	$1,310,925	$1,462,817	$151,892	11.6%
Public Fire	$3,477,566	$3,732,929	$255,363	7.3%
	$49,550,369	$55,461,369	$5,911,000	11.9%

V — RATE DESIGN

Q. PLEASE COMMENT ON THE COMPANY'S PROPOSED RATE DESIGN

A. As noted by Mr. Herbert, the goal of his rate design was to increase customer charges and volumetric rates so that each class approaches its relative cost of service while maintaining the conservation orientated rate structure (Herbert PFT, page 11). To this

end he recommended the 5/8 inch service customer charge be increased from the current $10.05 per month to $13.00 per month ($30.15 per quarter to $39 per quarter). He also recommended changes to the rate structure to: (1) establish monthly and quarterly rate blocks in order to accommodate monthly and quarterly billing, and (2) adjust the allowed water per rate block downward. For example, for a customer under quarterly billing, the first block was reduced form 5,000 gallons to 3,000 gallons and the tail block was reduced from usage over 20,000 gallons to usage over 15,000 gallons. The result of the later recommendation is that customer will start being billed at the tail block rate at a lower usage level. Given that the Company already has an inclining block rate structure, the change will help with water conservation (Herbert PFT, pages 11-12).

The Company's proposed change to the rate structure is reasonable. It is not a large change but is a measured step to give the customer the price signal to conserve.

The Company's proposed increase to the customer charge should not be adopted at this time. While the proposed charge is cost-based, the resultant increase of 30% is unwarranted when Staff's recommended rate increase in only 12%. Since the difference between the cost of service and the current customer charge is small ($3.0 per month for a 5/8 inch service) the move towards full cost of service rates can be done over two rates case. As such, I recommend a measured step towards moving the customer charge closer to the cost of service and recommend it be increase to $11.50

per month ($35.50 per quarter). In the next rate case, the issue can reviewed again at that time. This same rational of limiting the increase in the customer charge to 15% should apply to other service sizes as well.

A revenue proof, the present and proposed rates along with the impacts on customers bills is attached as Exhibit__(FWR-2).

Q. PLEASE COMMENT ON THE COMPANY'S OTHER TARIFF CHANGES?

A. The Company has proposed a number of changes to fees that it charges for services. For example the Company proposes to charge $300 for a hydrant flow test and $235 for a copy for a previous flow test results. I have reviewed the Company's workpapers to determine if all of the proposed fees are cost based and are allowed under Delaware law and found them to be just and reasonable. Thus, the proposed fees for turn-ons and turn-offs, block access to curb valve, and fees relating to hydrant flow tests should be accepted.

Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

A. Yes it does.

EXHIBIT D

HRe Delmarva Power and Light Company
Joint applicants: Conectiv Communications, Inc.; Potomac Electric Power Company; New RC, Inc.
PSC Docket No. 01-194
Order No. 5941

Delaware Public Service Commission
April 16, 2002

ORDER granting a joint application for approval of a proposed electric utility merger, subject to the terms of a settlement agreement. Commission approves the transfer of indirect control of a jurisdictional electric utility, Delmarva Power & Light Co., and its corporate parent, Conectiv, into a subsidiary of a company owned by Potomac Electric Power Company (PEPCO), an electric utility that provides service in the District of Columbia and surrounding Maryland suburbs.

Commission finds that the proposed merger is in accordance with the law, is for a proper purpose, and is consistent with the public interest - thus satisfying statutory requirements for merger approval. In particular, the commission finds that the merger, as conditioned by the settlement, will enhance reliability through increased investment strength, will enhance customer service through the adoption of service guarantees, and will ensure the continued provision of safe and reliable transmission and distribution services.

In support of its public interest determination, the commission concludes that the merger settlement provides the following benefits to residents of the state of Delaware:

• a rate freeze that begins at the end of the restructuring transition period and continues through May 2006;

• maintenance of the operational headquarters of Delmarva Power, and consequently jobs, in Delaware;

•. continuation of the current level of contributions from Delmarva Power to charities;

• an agreement by Delmarva not to seek rate recovery of merger-related costs;

• contributions by Delmarva to promote renewable resources in Delaware;

• adoption by Delmarva of service level guarantees;

• acceleration of an already-planned transmission improvement project to May 2006, and completion of three additional transmission projects by May 2008;

• contributions by Delmarva for job training and small business development in Delaware;

• implementation by Delmarva of a methodology for reducing congestion on the transmission system;

• an agreement by the merger applicants to honor all union contracts;

• a promise by Delmarva to modify the process for information exchanges with competitive suppliers to promote the development of a competitive market.

Commission - relying on the testimony of the merger applicants, its staff, and the Division of the Public Advocate - finds that the settlement rates satisfy the statutory requirement that post-transition rates be 'representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin.'

The settlement eliminates the fixed-price option for large customers who return to the supply service of the utility after taking service from a competing supplier, thus limiting returning customers to either market pricing standard service or a negotiated contract rate. Commission rejects claims that the merger settlement is harmful to competition insofar as it allows for the continuation of monopoly standard offer service. Moreover, it states that it does not believe 'that it is in the public interest to abandon a cap on how high rates can go in order to encourage more competition and possibly have Delaware consumers pay even higher rates.' In any event, the commission notes that the promotion of competition is not the sole issue that it should consider in determining whether the merger settlement is in the public interest.

For an order of the District of Columbia Public Service Commission approving the proposed merger, see *Re Potomac Electric Power Co.*, 217 PUR4th 100

(D.C.P.S.C.2002).

Re Delmarva Power and Light Company

Before McRae, chair and Conaway, Puglisi and Lester, commissioners.

BY THE COMMISSION:

I. *BACKGROUND*

1. On May 11, 2001, applicants Delmarva Power & Light Company ('Delmarva '), Conectiv Communications, Inc. ('Conectiv'), Potomac Electric Power Company ('PEPCO'), and New RC, Inc., jointly filed an application ('Application') with the Public Service Commission of the State of Delaware (the 'Commission') for approval of the proposed transfer of indirect control of Delmarva and Conectiv to New RC and PEPCO via a merger of Delmarva's parent corporation, Conectiv, into a subsidiary of New RC. New RC is currently owned by PEPCO, but upon closing will become the parent of PEPCO and Conectiv.

2. The Commission opened this docket to consider the Application, and designated Robert P. Haynes as Hearing Examiner.

3. Besides Staff and the Division of the Public Advocate ('DPA'), the following parties intervened and participated in the proceedings: the International Brotherhood of Electrical Workers Local Union No. 1307 ('IBEW'); BOC Gases, Inc. ('BOC'); the Consumers Education & Protective Association of Delaware ('CEPA'); Mr. Bernard J. August ('Mr. August'); the Cable Telecommunications Association of MD, DE and DC ('Cable'); Old Dominion Electric Cooperative ('ODEC'), the Delaware Electric Cooperative ('DEC'); the Delaware Energy Users Group ('DEUG'); and AES NewEnergy, Inc. ('AES').

4. On October 17, 2001, Staff, ODEC/DEC, AES, and the DPA submitted direct testimony in opposition to the Application.

5. At Staff's request, the procedural schedule was suspended in order to permit the parties to engage in settlement discussions.

6. On November 28, 2001, a hearing was held at which all of the prefiled direct testimony was entered into the record, although cross-examination was adjourned to allow additional settlement negotiations.

7. On November 30, 2001, all parties except AES (the 'Settling Parties ') jointly filed a Proposed Settlement.

8. On December 14, 2001, AES filed supplemental direct testimony opposing the Proposed Settlement.

9. At a subsequent hearing to consider the Proposed Settlement held on December 18, 2001, AES's supplemental direct testimony was entered into the record, and the various witnesses supporting the Proposed Settlement testified orally in favor of the Proposed Settlement and were subject to cross-examination by AES.

10. On January 11 and 18, 2002, the Settling Parties and AES submitted initial and reply post-hearing briefs.

11. On February 12, 2002, the Hearing Examiner issued his Findings and Recommendations ('HER') in which he recommended that the Commission approve the Proposed Settlement in its entirety.

12. On February 26, 2002, AES filed exceptions to the HER that set forth the same objections to the Proposed Settlement as it had set forth in its supplemental direct testimony and post-hearing briefs. 13. The Commission met on March 19, 2002 to hear oral argument and to deliberate in public session with respect to the HER. This represents the Commission's final Findings, Opinion, and Order in this docket.

II. *FINDINGS AND OPINION*

*1 [1-14] 14. The Proposed Settlement is in the public interest and should be approved. We are mindful of AES's contentions in its exceptions to the HER, which contentions were also presented to the Hearing Examiner, but we believe that the Hearing Examiner correctly addressed those arguments and found them wanting. [FN1]

15. First, AES challenges the provision of the Proposed Settlement that establishes a rate freeze at the end of the Transition Period set forth in 26 *Del. C.* § 1004(a). AES asserts that the Proposed Settlement's rate freeze extends the Transition Period beyond that established in Section 1004(a). (AES Exceptions, page 2.) The Hearing Examiner dismissed this contention, finding that nothing in the

Proposed Settlement extends the Transition Period beyond the dates provided in Section 1004, and noting that the Proposed Settlement actually recognizes the end of the statutory Transition Period because: (1) the rate freeze in the Proposed Settlement does not go into effect until after the Transition Period expires; and (2) the rates to be charged will be higher than the Transition Period rates. (HER at 26-27, ps 45.) We agree with the Hearing Examiner and adopt his reasoning.

16. Next, AES contends that the Proposed Settlement violates 26 *Del. C.* § 1006(a)(2) because there has been no showing that the post-transition rates will be representative of the 'regional wholesale electric market price plus a reasonable allowance for retail margin.' (AES Exceptions, page 2.) AES argues that none of the Settling Parties provided any 'evidence' of how the proposed rates were derived or that they comply with Section 1006(a)(2); rather, the Settling Parties only made 'mere oral assertions' that the proposed rates complied with Section 1006(a)(2).(*Id.* at 3.) AES further argues that this was not so, however, because the post-transition rates were derived in the 'exact same manner' as the transition rates and the fact that the proposed rates are higher than current transition rates does not mean that they satisfy the requirements of Section 1006(a)(2).(*Id.* at 5.) Thus, AES concluded, the Settling Parties have failed to meet their burden of proof with respect to the post-transition rates. (*Id.* at 3-5.)

17. The Hearing Examiner disagreed with AES's contentions. He found that Section 1006 did not change the Commission's authority to approve rate settlements when they were adequately supported and were in the public interest; rather, it only required the Commission to find that the proposed rates are 'representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin.'' (HER at 30) (citation omitted in original.) The statute does not tell the Commission how it has to make that finding. Here, the Hearing Examiner accepted Staff's argument that the post-transition rates were calculated in the same way as the transition rates, and if the transition rates were acceptable, then the post-transition rates should be acceptable as well. (HER at 30, ps 52.) The Hearing Examiner also noted the testimony of Staff witness Dillard, Applicants' witness Wathen, and DPA witness Crane, each of whom concluded that the Proposed Settlement's rate provisions are reasonable and should be approved as consistent with Section 1006. The Hearing Examiner found that these witnesses provided sufficient supporting testimony that the Commission may reasonably rely upon in determining that the Proposed Settlement's rates are representative of the regional wholesale market electric price, plus a reasonable allowance for retail margin. (HER at 30, (ps 51.) Furthermore, the Hearing Examiner observed that settlements do not require the same evidence as a fully litigated case does; indeed, if AES's argument were to be accepted, no settlement could ever be supported 'if the parties had to agree on the 'correct' ratemaking recipe used to support the end result.' (*Id.*) Additionally, the Hearing Examiner pointed out that AES could have proffered its own evidence that the post-transition rates did not comply with Section 1006(a)(2) but did not do so. (*Id.* at 30-31 (ps 53.) Finally, the Hearing Examiner observed that in a litigated rate case the Commission would have no authority to order Delmarva to freeze rates, and so the proposed rates should be considered as a benefit consistent with the public interest and Section 1006. (*Id.*)

18. We agree with the Hearing Examiner. This is a settlement of a contested proceeding, and under 26 *Del. C.* § 512 we need only determine whether the Proposed Settlement is in the public interest. We conclude that it is. The proposed rates were calculated in the same manner as the transition rates approved in PSC Docket No. 99-163, and the fact that those rates also were approved in a settlement is of no moment. The manner in which those rates were calculated was a contested issue at the hearing at which the proposed settlement of that docket was considered, and the Commission found that the rates did comply with Section 1006(a)(2). Therefore, we adopt the Hearing Examiner's reasoning in rejecting AES's contention.

19. On this same issue, AES argued that it had not had sufficient time to develop the record with respect to the rates in the Proposed Settlement. (AES Exceptions at 6.) The Hearing Examiner dismissed this contention, noting that AES could have (but did not) asked for discovery into the proposed rates at the time the procedural schedule was being revised to consider the Proposed Settlement; instead, it waited until the post-hearing briefing to raise the issue. In light of this, the Hearing Examiner concluded that AES had waived its argument concerning the lack of time to investigate the proposed rates. (HER at 32 ps 54.) We agree with the Hearing Examiner; if AES thought it needed additional time to investigate the proposed rates, it should have requested the Hearing Examiner to grant it that additional time, and if the Hearing Examiner declined to do so, it could have brought the matter before the Commission. Having failed to do so, it cannot now be heard to complain.

...

EXHIBIT 'A'

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Robert P. Haynes, duly appointed Hearing Examiner in this Docket pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* Ch. 101, by Commission Order No. 5722, dated May 22, 2001, reports to the Commission as follows:

...

51. AES still questions whether adequate evidence supports the Proposed Settlement's rate provisions. The Proposed Settlement's provisions on the post transition period's rates are supported by substantial evidence in the form of the opinion testimony of three expert witnesses. Staff witness Dillard, Applicants witness Wathen, and DPA witness Crane concluded that the Proposed Settlement's rate provisions are reasonable and should be approved as consistent with Section 1006. These witnesses provide sufficient supporting testimony that the Commission may reasonably rely upon in determining that the Proposed Settlement's rates are representative of the regional wholesale market electric price, plus a reasonable allowance for retail margin. Therefore, the Proposed Settlement's rates are supported and would comply with Section 1006.

52. Section 1006 did not change the Commission's authority to approve rate settlements when they are adequately supported and in the public interest. Section 1006 requires only that this Commission make a finding that the rates are 'representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin.' The Restructuring Act does not dictate to the Commission how to make that finding. If the Commission determines, based upon the record evidence of the witnesses, that the Proposed Settlement's end result is reasonable and representative of the region wholesale electric market price plus a reasonable allowance for retail margin, then Section 1006 is satisfied. I agree with Applicants' argument that adequate support for a settlement does not require the same evidence as a fully litigated case. AES would have this Commission require the parties to produce the specific ratemaking ingredients that went into the Proposed Settlement. No settlement could be supported if the parties' had to agree on the 'correct' ratemaking recipe used to support the end result. Instead, the settling parties agreed on rates that are an end result consistent with Section 1006. AES' criticism, if accepted, would eliminate one of the benefits of any settlement, namely, a quicker and less costly resolution of litigation. I also agree with Staff's argument that the Commission already approved the transition period rates under the same standard as Section 1006, and this approval was based upon a settlement that was more contested than the Proposed Settlement.

53. AES' point that the Proposed Settlement's supporting evidence is less than the support in a rate case also means that AES could easily have rebutted the evidence with its own evidence. Instead, AES relied only on the argument that the Proposed Settlement lacked support. AES had the opportunity to present its own evidence showing that the Proposed Settlement's rates are not 'representative of the regional wholesale electric market price, with a reasonable allowance for retail margin.' AES did not and seeks to defer any post-transition ratemaking to another proceeding. The issue properly has been included in this proceeding, and the ratemaking issues need not be deferred. It is reasonable and consistent with the Commission's authority over mergers to impose ratemaking conditions. The rate conditions in the Proposed Settlement are reasonable and adequately supported. Under the Proposed Settlement, the post-transition rates will be slightly higher than the present rates that this Commission already approved based upon a decrease in the monopoly distribution rates and an increase in the competitive supply rates. The overall changes are less than 1% increase. Moreover, the rates will remain in effect from the end of the transition periods until May 2006, which is a significant benefit to ratepayers. The Commission in a fully litigated rate case would not have any power to order Delmarva to freeze its rates. Thus, the Commission's authority to approve a merger properly should consider the Proposed Settlement's rates as an overall benefit consistent with the public interest and Section 1006 of the Restructuring Act.

54. AES also belatedly complains about the proceeding's lack of time to investigate the Proposed Settlement's rates, and states 'the procedural schedule established in this case did not permit additional discovery after the filing of the Settlement to allow the parties to even attempt to ascertain the appropriateness of the proposed rate changes.' AES IB at 7. AES may have had a valid complaint if it had been raised when the procedural schedule was being revised to consider the Proposed Settlement. AES waited until the briefing stage to voice its objection. Following the November 18, 2001 hearing, the parties proposed a consensus revised procedural schedule, which I approved. AES either concurred in the procedural schedule or did

not voice any objection at the time. Consequently, its argument that there was insufficient time to investigate the Proposed Settlement's rates is rejected as either untimely or waived. A party who raises procedural problems needs to do so when such problems may be corrected or else suffer the consequences of having its silence deemed consent to the procedures. Thus, under the circumstances presented in this case, [FN7] the Proposed Settlement should not be rejected on the ground that AES did not have an adequate opportunity to develop the record in opposing the Proposed Settlement because AES had the opportunity and did present its position through supplemental direct testimony.

...

V. *RECOMMENDATIONS*

96. Based upon the record and arguments presented and the above reasoning, I submit for the Commission's consideration the following recommendations:

*12 a) That the Commission reject the objections of AES to the Proposed Settlement;

b) That the Commission approve the Proposed Settlement, attached hereto as Appendix A, in its entirety and without modification;

c) That the Commission determine that the rate provisions of the Proposed Settlement are consistent with Section 1006 of the Restructuring Act;

d) That the Commission approve the Application, as modified and conditioned by the Proposed Settlement; and

d) That the Commission reserve the right to issue such orders as may be necessary to implement the Proposed Settlement, including the approval of tariffs.

Respectfully submitted,

Robert P. Haynes Hearing Examiner

...

END OF DOCUMENT

EXHIBIT E

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION OF RATES (Filed April 22, 2008)	PSC Docket No. 08-96

SUPPLEMENTAL TESTIMONY IN SUPPORT OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A REVISION OF RATES

Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Telephone: (302) 453-6900
Facsimile: (302) 453-6957
E-mail: artesian@artesianwater.com

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Michael Houghton (#2179)
R. Judson Scaggs, Jr. (#2676)
Geoffrey A. Sawyer, III (#4754)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
E-mail: mhoughton@mnat.com

July 11, 2008

"Total Rate Base Elements" after the various adjustments noted above, calculated in accordance with statutory requirements and valued at original cost as of the end of the Test Period is $194,134,636, a decrease of $5,443,422 from the initial application in this proceeding.

Tariff Changes

Q. Has there been a change to your tariff in the supplemental filing?

A. Yes. The Company has modified the tariff to reflect proposed changes as follows:

1. On Sheet 6a, in the Turn-on and Shut-off section, Violation of Company Rules, the fees have been increased for disconnection and reconnection of customers who have violated the Company's rules, for those customers who request disconnection and reconnection, and for new customers requesting connection without an appointment. The fee for disconnection and reconnection for customers who have violated the Company's rules is increasing from $40.00 to $100.00 if performed during the Company's regular working hours, and from $55.00 to $145.00 if performed during other than regular working hours. The fee for those customers who request disconnection and reconnection is increasing from $30.00 to $50.00 if completed during regular working hours, and from $45.00 to $65.00 if completed during other than regular working hours. New customers requesting connection without an appointment will be charged $50.00 if during the Company's regular working hours and $65.00 if not during the Company's regular working hours. These fees are cost-based and reflect increases in costs to the Company in performing these services.

In addition, tariff language and a $50.00 fee was added to address when a customer blocks access to the curb stop preventing shut-off service.

2. On Sheet 9, in the Security Deposit section the Company has added language to increase the deposit amount to $200 for a customer who is a tenant of a property and is responsible for payment of the bill for water service. This deposit will not be refunded to the customer until he/she is no longer a tenant and has terminated water service to that property.

3. On Sheet 11, in the Maintenance by Customer section, language was added in regard to providing unobstructed access to the Company's curb stop and Company incurred costs related to accessing the curb stop.

4. On Sheet 22, in the Delinquent Bills section, the Company has corrected the language for the late payment penalty to match what was previously approved in rate docket 04-42 and properly reflected on Sheet 3.

Q. Please discuss the change in security deposits for customers who are tenants in property served by Artesian.

A. A large majority of the Company's associated write-offs of bad debts result from tenants who vacate properties with no forwarding addresses, leaving the Company little opportunity to recover appropriately billed water service.

Q. Do you have any modifications to the Customer Assistance Program that you proposed?

A. Yes, subsequent to our initial filing we were contacted by Catholic Charities, a community-based organization that has offered to administer a fund that would assist eligible customers who are having difficulty paying their water bill. In summary, this program provides for monetary assistance, capped at $100 from the established fund, and

requires a set amount the customer must pay in good faith towards their bill. Artesian will initially provide $50,000 for this fund, based on the recommendation of Catholic Charities.

The Company will retain the conservation assistance aspect of the plan as described in our initial filing, which meets the Water Self-Sufficiency Law requirements as part of a Consumer Water Conservation Program.

Q. Does this complete your supplemental direct testimony?

A. Yes, it does.

EXHIBIT F

HOnly the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Chancery of Delaware.
FITZGERALD
v.
CANTOR, et al.
No. C.A. 16297-NC.

Jan. 10, 2000.

Counsel:

STEELE, J.

*1 Defendants seek to reopen the record in order to admit additional evidence before judgment pursuant to Rule 59(a) of this Court and urge the Court to take judicial notice of a December 10, 1999, prospectus for eSpeed (confirmed in an S-1 filed with the SEC), a wholly owned subsidiary of plaintiff CLFP that, according to the prospectus, "operate[s] global interactive electronic marketplaces that enable the trading of financial instruments and other products instantaneously, more effectively and at lower cost than traditional trading methods."[FN1] I accept, for the purpose of this motion, that defendants correctly assert that:

> FN1. Prospectus for 9,000,000 Shares eSpeed Class A Common Stock dated December 10, 1999 at 1.

1. The S-1 has relevance to, at least, the issue of how CFLP may have been harmed by the defendants' "competitive activities";

2. Consideration of the document may have some probative value and assist the Court in evaluating the credibility of some of CFLP's witnesses; and,

3. It may be admitted pursuant to Rule 803(8) as an exception to what might otherwise be considered to be hearsay because the plaintiff filed it with a public body. Nevertheless, I must consider whether, at this stage of the proceedings, the probative value of the prospectus and SEC filing may be outweighed by a need for the Court to engage in a post-trial "mini-trial" in order to appropriately consider the contentious differences between the parties over the relevant inferences to be drawn by the Court from the language contained in the document. After balancing the relative impact of this proposed new evidence against considerations of further delay in disposition of this case, the unfair prejudice caused to plaintiff by its concomitant need for further development of the record in order to meet defendants' interpretation of the evidence and the necessary additional commitment of judicial resources, I conclude that Rule 59(a)'s focus upon preventing injustice does not require that I exercise my discretion and "reopen" the record. I further conclude that consideration of the evidence under D.R.E. 403 would prevent its admission even if I reopened the record for that purpose. Accordingly, I deny defendants' application to reopen the evidence for the purpose of admitting the prospectus and S-1.

Discussion

Defendants' motion to reopen the record is addressed to the discretion of this Court.[FN2] Defendants assert that the Form S-1 should be admitted because it contradicts CFLP's prior testimony on the difficulty of developing CFTS into a competitive trading system and confirms that CFLP has not suffered harm.[FN3] Specifically, defendants argue that statements in the Form S-1 contradict plaintiff's testimony "that it had to divert resources from its GTS platform to its CFTS platform because only GTS possessed MOLE, multicurrency functionality and an order book."[FN4] According to plaintiff, however, defendants misunderstand the testimony as well as the description of the eSpeed system presented in the Form S-1.

> FN2. *El Paso Natural Gas Co. v. Amoco Production Co.*, Del. Ch., C.A. No. 12083, at 24 n. 15, Allen, C. (Mar. 4, 1992).

> FN3. Defendants also suggest, but fail to support, a claim that plaintiff had an obligation to update its discovery responses by producing drafts of the Form S-1. To the extent that an additional claim, based on the al-

leged failure of the draft S-1 to mention MDC or this litigation, was valid, it has been made moot by the inclusion of these statements in the S-1 filed on December 10, 1999.

FN4. Letter from Stephen E. Jenkins to Court 2 (Oct. 8, 1999).

Defendants' motion to introduce the prospectus is timely. Defendants were unable to produce this evidence at an earlier time as the December 10, 1999, prospectus obviously did not exist at the time of trial. Approximately one year before the filing of the Form S-1, however, defendants were informed that plaintiff was developing a stand alone software for electronic trading of Treasuries called eSpeed (that was also known as CFETI or Cantor Direct) that was a separate application from the ZTS and MMTS systems.[FN5] Moreover, by their own admission, defendants knew prior to the July 7, 1999, deposition of Lutnick and prior to the end of trial "about a global platform based on eSpeed."[FN6] At his deposition, Lutnick stated that CFTS or eSpeed were "ways to describe the electronic trading system" but that eSpeed was not identical to CFTS.[FN7] Defendants had an opportunity to explore the precise characteristics of eSpeed, the development of a "global platform" at that time and the impact as of that time and in the future on the relative harm their "competition" might cause CFLP in light of the future development prospects for eSpeed.

FN5. Pinto 12/22/98 Dep. at 16-18, 76-80, Varacchi 1/6/99 Dep. at 87-91.

FN6. Record 12/7/99 at 152.

FN7. Lutnick 7/7/99 Dep. at 40-42, 51.

*2 In *In re U.S. Robotics Corp. Shareholders Litigation*, this Court refused to reopen a Final Judgment to allow the submission of a Form 10-Q, filed with the SEC after judgment was entered, that purportedly revealed that defendant had overstated its earnings.[FN8] The Court held that the evidence was not "newly discovered evidence" as required by Rule 60(b)(2) as the movants had the opportunity, but failed, to inquire about the performance of the defendant at the time it deposed the defendant's CEO.[FN9] Quoting the Delaware Supreme Court, Vice Chancellor Strine noted that:

FN8. *In re U.S. Robotics Corp. Shareholders Litig.*, Del. Ch., C.A. No. 15580, Strine, V.C. (Mar. 15, 1999).

FN9. *Id.* at 23.

> [t]he general rule is that witnesses must be examined fully and specifically as to their knowledge of all material matters in controversy; and where a witness has in fact testified at the trial, a rehearing based on evidence which could have been elicited by a proper examination will be refused except in a very strong case.[FN10]

FN10. *Kennedy v. Emerald Coal & Coke Co.*, Del.Supr., 42 A.2d 398, 405 (1944).

I recognize that Vice Chancellor Strine addressed a post judgment application and that final judgment has not been entered here. However, similar policy considerations are implicated. Had defendants vigorously pursued the issue at deposition, or at least developed the potential issue at deposition and followed up at trial, CFLP could have had the opportunity to address the factual contentions and disagreement over the inferences that can be drawn from the statements in the S-1 at trial. While the S-1 itself may not have been in final form during trial, the facts supporting the statements in the S-1 could have been flushed out and put in contention in trial. The suggestion that the Court should either adopt the construction urged by the Defendants or reopen the case and permit the parties to present facts and argument focused on how the statements in the S-1 should be construed and in what context they should be considered comes too late. It is my firm view that here the probative value of the evidence found in the S-1 appears substantially outweighed by considerations of undue delay in disposition of this case, a waste of the Court's time given its potential impact on the issue of harm or balancing of the equities between the parties, and unfairly prejudicial to CFLP in that they would now be forced to galvanize yet another major effort to gather evidence to explain their view of the inferences to be drawn from the S-1 if it were admitted.

Defendants' arguments do not overcome the burden placed on the parties and the Court that would result from the need to conduct, over five months after trial,

a "mini-trial" to reconcile disputed evidence with limited probative value. It would be inappropriate, under these circumstances, for me to exercise my discretion to reopen the record and admit the proferred evidence. Defendants' application is denied.

IT IS SO ORDERED.

Del.Ch.,2000.
Fitzgerald v. Cantor
Not Reported in A.2d, 2000 WL 128851 (Del.Ch.)

END OF DOCUMENT

EXHIBIT G

HOnly the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Chancery of Delaware,
New Castle County.
Martha S. SUTHERLAND
v.
Perry H. SUTHERLAND, Todd L. Sutherland, and Mark B. Sutherland, and Dardanelle Timber Co., Inc. and Sutherland Lumber Southwest, Inc.
C.A. No. 2399-VCL.

Submitted: Feb. 7, 2008.
Decided: Feb. 14, 2008.

West KeySummary
Corporations 101 ⚷206(1)

101 Corporations
101IX Members and Stockholders
101IX(C) Suing or Defending on Behalf of Corporation
101k206 Refusal of Corporation, Officers, or Stockholders to Act
101k206(1) k. In General. Most Cited Cases

Revision and supplementation of the report of a corporation's special litigation committee would not be proper in a shareholder derivative action. Allowing revision and supplementation would cause unfair prejudice to the plaintiffs. The revision and supplementation were sought after oral arguments had been heard on a motion to dismiss.

J. Travis Laster, Esquire, Abrams & Laster, LLP, Wilmington, DE.

A. Gilchrist Sparks, Esquire, Morris, Nichols, Arsht & Tunnell, LLP, Wilmington, DE.

Robert S. Saunders, Esquire, Skadden Arps Slate Meagher & Flom, LLP, Wilmington, DE.

STEPHEN P. LAMB, Vice Chancellor.

*1 Dear Counsel:

I have reviewed and considered your letters of February 7th (Mr. Sparks) and February 8th (Mr. Laster), concerning the Report of the Special Litigation Committees ("SLC") of the Boards of Directors of Dardanelle Timber Co., Inc. and Sutherland Lumber-Southwest, Inc., dated March 26, 2007 ("Report"). In his letter, Mr. Sparks, on behalf of the SLC, seeks leave to revise and supplement the Report and to submit an extensive additional appendix. Mr. Laster opposes this request. I conclude that the pending motion to dismiss should, in fairness to the plaintiff, be determined on the basis of the extensive record developed in discovery into the SLC's independence and good faith-without any further supplementation or revision to the SLC's Report. In that connection, I do not anticipate that resolution of the motion to dismiss will be based in any material respect on the form in which the SLC chose to present its findings. Thus, the denial of the request to revise and supplement the Report should not work any hardship on the SLC or the nominal defendants.

I.

The Report was prepared by Bryan Jeffrey, a newly appointed director of both corporations, acting as a one-man SLC, with the assistance of his counsel, Morris, Nichols, Arsht & Tunnell. The Report forms the basis for the nominal defendants' motion to dismiss this derivative and double derivative action, argued February 7, 2008. Notably, the plaintiff and her brother who supports this litigation each hold 25% of the outstanding common stock of Dardanelle, which is itself the 100% owner of Southwest. Two of the individual defendants, who are the plaintiff's other brothers, own the other 50% of the common shares in equal shares. One of the defendants also holds a proxy to vote certain voting preferred stock owned by their mother's trust. Thus, the two individual defendants, by voting together, are able to control the corporations and elect all directors. The third individual defendant is their cousin.

At the time the SLC was formed, the court agreed to

impose a brief stay of proceedings to permit the SLC to do its work without the interference that would be caused by the simultaneous conduct of discovery by the plaintiff. The court did so reluctantly, and only after observing that the use of a one-person SLC in the context of these closely held corporations pressed the theory of *Zapata*[FN1] to the extreme. The court made it plain that both the independence of the SLC and the good faith of its inquiry would be the subject of close scrutiny if the investigation resulted in a recommendation that the litigation be dismissed.

FN1. *See Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del.1981).

The Report summarizes the investigation done and factual conclusions reached by the SLC in a format that entirely omits any record citation, either to documentary evidence or to the witness summaries the SLC's counsel prepared in the course of its investigation. The Report does contain an appendix but it is limited to certain analyses of one particular aspect of the complaint. None of the source documents or testimonial evidence is found therein. Nonetheless, as sometimes happens in situations of this kind, the Report is relied upon by the nominal defendants as if it were itself evidence of both the good faith of the SLC's investigation and the factual conclusions it reached. This shortcoming was the central argument around which the plaintiff developed her opposition brief.

*2 In reply, the SLC submitted a lawyer's affidavit that appended select witness summaries and deposition transcripts. Even with these additional submissions, however, the Report remains less than fully documented. At oral argument, the paucity of record citation or documentation in the Report remained a focal point of contention. Counsel for the SLC explained that the Report comported with his understanding, based on past practice, of the format such reports should take. In support, counsel offered to, and ultimately did, submit a report similarly devoid of citation and documentation that this court relied on in dismissing the derivative complaint in *Kindt v. Lund*.[FN2] Plaintiff's counsel maintained that the lack of citation or documentation of any kind in the Report left the SLC unable to meet its burden of proof with respect to good faith, independence, and reasonableness.

FN2. No. 17751, 2004 WL 21453879 (Del. Ch. May 30, 2003).

As noted, Mr. Sparks submitted the *Kindt* SLC report, as well as a letter making the present request for leave to revise and supplement the Report and to submit an extensive additional appendix. Plaintiff's counsel objected, arguing it would be unfair and prejudicial to the plaintiff to allow the SLC to supplement the record, and sought to distinguish the case from *Kindt*.

II.

A motion to supplement the record is addressed to the discretion of the trial court.[FN3] Among the factors the Delaware courts have considered in deciding this and similar types of motions are 1) when the evidence came to the moving party's knowledge,[FN4] 2) whether the exercise of reasonable diligence would have caused the moving party to discover the evidence earlier, [FN5] 3) whether the evidence is so material and relevant that it will likely change the outcome,[FN6] 4) whether the evidence is material and not merely cumulative,[FN7] 5) whether the moving party has made a timely motion,[FN8] 6) whether undue prejudice will inure to the nonmoving party, [FN9] and 7) considerations of judicial economy.[FN10] Ultimately, a motion to supplement the record turns on the interests of fairness and justice. [FN11]

FN3. *Carlson v. Hallinan*, 925 A.2d 506, 519 (Del.Ch.2006) (citing *Fitzgerald v. Cantor*, No. 16297, 2000 WL 128851, at *1 (Del.Ch. Jan.10, 2000)).

FN4. *Id.* (citing *Poole v. N.V. Dell Maatschappij*, 257 A.2d 241, 243 (Del.Ch.1969) (motion to reopen record to conform to appellate court's ruling)).

FN5. *Id.*

FN6. *Id.* at 519-20.

FN7. *Id.* at 520; *see also Procter & Gamble Co. v. Paragon Trade Brands, Inc.*, 15 F.Supp.2d 406, 409 (D.Del.1998) (motion for a new trial or, alternatively, to alter or amend the judgment).

FN8. *See* *Carlson*, 925 A.2d at 520 (citing *Fitzgerald*, 2000 WL 128851, at *2).

FN9. *Id.*; *see also* *Kahn v. Tremont Corp.*, No. 12339, 1997 WL 689488, at *5 (Del.Ch. Oct.28, 1997) (motion to reopen record on remand after appellate court shifted burden of proof).

FN10. *Carlson*, 925 A.2d at 520; *Fitzgerald*, 2000 WL 128851, at *2; *Tremont Corp.*, 1997 WL 689488, at *5.

FN11. *Carlson*, 925 A.2d at 520 (citing *Tremont Corp.*, 1997 WL 689488, at *5).

In this case, the limited probative value of the proffered evidence is far outweighed by the prejudice the plaintiff would face were the court to grant the SLC's request. That is not to say that the offered supplemental evidence is without any probative value. Although the SLC argues that a report need not cite to documents entered into the record, such citations would undoubtedly aid the court's evaluation of the report.[FN12] The cases cited by the SLC in support of its position do not suggest otherwise. In *Kindt*, the good faith and independence of the three-person SLC in that case were not seriously challenged, and the report's lack of record citation was not raised or considered.[FN13] In *Kaplan v. Wyatt*, the court noted that the SLC in that case submitted a "156-page report, supplemented by appendixes and affidavits," suggesting that the report cited to documents entered into the record.[FN14] Still, the court does not anticipate that either the absence of such evidence from the record or the format of the Report will materially affect resolution of the motion to dismiss. Thus, the denial of this motion will not prejudice the SLC or the nominal defendants in any significant way.

FN12. *See* *St. Clair Shores Gen. Employees Ret. Sys. v. Eibeler*, No. 688, 2007 WL 3071837, at *5 (S.D.N.Y. Oct.17, 2007) (stating "insofar as the Report contains conclusory statements without discussion or direct citation, the plaintiff may bring such inadequacies to the Court's attention. Undoubtedly, these alleged flaws and inadequacies-if any-will influence the Court's evaluation of the SLC's independence and good faith, and the reasonableness of the bases for its conclusions."); *see also* *Kaplan v. Wyatt*, 484 A.2d 501, 507, 519 (Del.Ch. Nov.5, 1984) (noting that the SLC bears the burden of proving its good faith, independence, and reasonableness, and stating that "what the Committee did or did not do, and the actual existence of the documents and persons purportedly examined by it, should constitute the factual record on which the decision as to the independence and good faith of the Committee, and the adequacy of its investigation in light of the derivative charges made, must be made").

FN13. 2003 WL 21453879, at *2, 4.

FN14. 1984 WL 8274, at *1.

*3 In contrast, the motion is untimely and granting it would subject the plaintiff to prejudice. The plaintiff has conducted this stage of litigation, which included review of over 14,000 documents, three depositions, an opposition brief, and oral argument, based largely on her argument that the Report's lack of record citation prevented the SLC from meeting its burden of proof on the motion to dismiss. As a result, allowing the SLC to supplement the Report now would force the plaintiff to start anew-developing a new strategy, briefing a new opposition, preparing for another oral argument, and possibly taking further discovery. Clearly, granting the SLC's motion at this late date would unfairly prejudice the plaintiff.[FN15]

FN15. *See* *Carlson*, 925 A.2d at 521; *Fitzgerald*, 2000 WL 128851, at *2 (concluding that allowing supplementation of the record would be "unfairly prejudicial to [the non-movants] in that they would now be forced to galvanize yet another major effort to gather evidence to explain their view of the inferences to be drawn from the [proffered evidence] if it were admitted").

This prejudice is all the more burdensome because the SLC became aware of the plaintiff's argument when she filed her opposition brief, and could have moved to supplement the record at that time. Instead, it chose to defend its Report as written, albeit with the aid of certain interview

memoranda and supporting documents submitted with the reply brief.

In addition, the court has already presided over oral argument of this case and reviewed extensive briefing. The motion is ready for decision. Therefore, granting the SLC's motion would waste judicial resources.[FN16] This is especially so in the context of a *Zapata* motion, which this court has previously recognized as inefficient due to its tendency to create "litigation within litigation." [FN17] For the reasons stated above, the motion is denied. IT IS SO ORDERED.

FN16. *See Carlson*, 925 A.2d at 521.

FN17. *Kaplan*, 484 A.2d at 510-512 (noting that there is litigation, first, over the SLC's motion for a stay pending its investigation, then, over the amount of discovery a plaintiff may take in order to challenge the SLC's investigation, and, finally, over the SLC's motion to dismiss. "In short, the new *Zapata* procedure ... has the pragmatic effect of setting up a form of litigation within litigation.").

/s/ Stephen P. Lamb

Vice Chancellor

Del.Ch.,2008.
Sutherland v. Sutherland
Not Reported in A.2d, 2008 WL 571253 (Del.Ch.)

END OF DOCUMENT

APPENDIX C

Electronic Mail Message from Michael
to
Senior Hearing Examiner Ruth Ann Price
Dated April 21, 2009

Price Ruth (DOS)

From:	Sheehy Michael (DOS)
Sent:	Tuesday, April 21, 2009 3:60 PM
To:	Price Ruth (DOS)
Cc:	Padmore Arthur (DOS); Walker Kent (DOJ)

Your Honor:

In response to your request regarding documents that we may use to support or illustrate the point(s) in our argument I ask that you direct your attention to:

Mr. Spacht's Rebuttal Testimony, page 8:

Q. Neither Messrs. Smith nor Cotton have proposed an adjustment to the Company's cash working capital calculation based on the other changes proposed in both consultants' testimony. Do you agree?

A. No. When adjustments are made during this administrative proceeding all attributes have to be synchronized to reflect the accurate inter-relationship between various rate elements. For example, adjustments to utility plant result in adjustments to the depreciation expense adjustment. **In this case, adjustments to elements reflected in the cash working capital calculation are adjusted and result in adjustments to the rate base request in this case. These elements should all be synchronized in finalizing the rate increase approved in this application, which includes the cash working capital.** (Emphasis added).

Artesian's Opening Brief, page 8:

It has been customary, and it is appropriate, to synchronize the various elements of rate base and operating expenses following the final determination of all the various issues in a rate case. Therefore the projected income statement used to develop the Cash Working Capital requirement should be revised at the end of this proceeding to recognize any changes allowed by the Commission and the corresponding increase or decrease in the reserve requirement. (Emphasis added).

The DPA's brief on pages 13-14:

"The Public Advocate agrees with Artesian's recommendation on page 8 of its opening brief that the Commission should recalculate Artesian's cash working capital requirement based on the level of costs found to be appropriate by the Commission."

We trust this illustrates our position that Artesian agrees that the cash working capital component of the Company's award should be recalculated once the Commission has rendered a final decision in this matter. We note that the change to monthly billing will affect the cash working capital by changing the revenue lag by some 30 days (quarterly revenue lag is about 45 days or [365/4/2]; monthly lag is about 15 days or [365/12/2]) and we request that Your Honor recommend a recalculation of the cash working capital once the Commission has rendered a final decision on monthly billing.

Regards,
Michael D. Sheehy
Deputy Director
Division of the Public Advocate
820 N. French St.
4th Floor

Wilmington, DE 19801
302.577.5078
302.256.6199
michael.sheehy@state.de.us

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION	)	
OF ARTESIAN WATER COMPANY, INC.	)	**PSC DOCKET NO. 14-132**
FOR A REVISION OF RATES	)	
(Filed April 11, 2014)	)	

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2015, I caused the attached **JOINT OPPOSITION OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE AND THE STAFF OF THE DELAWARE PUBLIC SERVICE COMMISSION TO ARTESIAN WATER COMPANY, INC.'S MOTION TO SUPPLEMENT THE RECORD** to be served by electronic mail on all persons on the accompanying service list.

/s/ Regina A. Iorii
Regina A. Iorii (#2600)
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8159
regina.iorii@state.de.us

Counsel for the Division of the Public Advocate

Dated: January 16, 2015

SERVICE LIST

ARTESIAN RATE CASE
PSC DOCKET No. 14-132
(As of 08-01-14)

Mark Lawrence
Senior Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7540
Fax: 302-739-4849
Email: mark.lawrence@state.de.us

James McC. Geddes, Esq.
Ashby & Geddes
500 Delaware Avenue, Suite 800
P.O. Box 1150
Wilmington, DE 19899
Tel: 302-654-1888
Fax: 302-654-2067
E-mail: jgeddes@ashby-geddes.com
jamesgeddes@mac.com

Julie "Jo" Donoghue, Esq.
Deputy Attorney General
Delaware Department of Justice
820 North French Street, 6th Floor
Wilmington, DE 19801
Tel: 302-577-8348
Email: jo.donoghue@state.de.us

Malika Davis
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7521
Fax: 302-739-4849
Email: malika.davis@state.de.us

Robert J. Howatt
Executive Director
Delaware Public Service Commission
861 Silver Lake Blvd, Suite 100
Dover, DE 19904
Tel: 302-736-7516
Fax: 302-739-4849
Email: robert.howatt@state.de.us

Janis Dillard
Deputy Executive Director
Delaware Public Service Commission
861 Silver Lake Blvd, Suite 100
Dover, DE 19904
Tel: 302-736-7542
Fax: 302-739-4849
Email: janis.dillard@state.de.us

Connie McDowell
Senior Regulatory Policy Administrator
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7535
Fax: 302-739-4849
Email: connie.mcdowell@state.de.us

Amy Woodward
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7566
Fax: 302-739-4849
Email: amy.woodward@state.de.us

Lisa Driggins
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7550
Fax: 302-739-4849
Email: lisa.driggins@state.de.us

Toni Loper
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7534
Fax: 302-739-4849
Email: toni.loper@state.de.us

Jason Smith
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7549
Fax: 302-739-4849
Email: jason.r.smith@state.de.us

Clishona Marshall
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Tel: 302-736-7539
Fax: 302-739-4849
Email: clishona.marshall@state.de.us

PSC Consultants:

David C. Parcell
Technical Associates, Inc.
9030 Stony Point Parkway, Ste. 580
Richmond, VA 23235
Tel: 804 272-5363
Fax: 804-272-3598
E-mail: parcelld@tai-econ.com

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue
St. Louis, MO 63105
Tel: 314-725-2511
Email: excel.consulting@sbcglobal.net

David Peterson
Chesapeake Regulatory Consultants
10351 S. Maryland Blvd., Ste. 202
Dunkirk, MD 20754
Phone: 410-286-0503
E-mail: davep@chesapeake.net

Artesian:

John J. Schreppler II, Esq.
Vice President & General Counsel
Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Tel: 302-453-6900
Fax: 302-453-6957
Email: jschreppler@artesianwater.com

David Spacht
CFO & Treasurer
Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Tel: 302-453-6912
Fax: 302-453-6957
Email: dspacht@artesianwater.com

David Valcarenghi
Manager of Rates & Regulation
Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Tel: 302-453-6995
Fax: 302-453-6957
Email: dvalcarenghi@artesianwater.com

Stephanie Keithley
Rates Analyst
Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Tel: 302-453-6945
Fax: 302-453-6957
Email: skeithley@artesianwater.com

C. Thomas deLorimier
Manager of Engineering
Artesian Water Company, Inc.
664 Churchmans Road
Newark, DE 19702
Tel: 302-453-6995
Fax: 302-453-6957
Email: tdelorimier@artesianwater.com

Artesian Counsel:

Karl Randall, Esq.
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, P.O.Box 1347
Wilmington, DE 19899
Tel: 302-351-9465
Fax: 302-225-2566
Email: krandall@mnat.com

Barbara A. Pietruczenia
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, P.O. Box 1347
Wilmington, DE 19899
Tel: 302-351-9326
Fax: 302-225-2566
Email: bpietruczenia@mnat.com

Michael Houghton, Esq.
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, P.O.Box 1347
Wilmington, DE 19899
Tel: 302-351-9215
Fax: 302-425-4675
mhoughton@mnat.com

R. Judson Scaggs, Jr., Esq.
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, P.O.Box 1347
Wilmington, DE 19899
Tel: 302-351-9340
Fax: 302-425-3014
rscaggs@mnat.com

DPA:

David Bonar
Public Advocate
Division of the Public Advocate
John G. Townsend Building
401 Federal Street, Suite 3 (SOS)
Dover, DE 19901
Tel: 302-857-3660
Fax: 302-739-4111
Email: david.bonar@state.de.us

Ruth Ann Price
Deputy Public Advocate
Division of the Public Advocate
820 North French Street, 4th Floor
Wilmington, DE 19801
Tel: 302-577-5014
Fax: 302-577-3297
Email: ruth.price@state.de.us

Regina Iorii, Esq.
Deputy Attorney General
Delaware Department of Justice
820 North French Street, 6th Floor
Wilmington, DE 19801
Tel: 302-577-8159
Email: regina.iorii@state.de.us

Andrea B. Maucher
Division of the Public Advocate
John G. Townsend Building
401 Federal Street, Suite 3 (SOS)
Dover, DE 19901
Phone: (302) 857-4620
Fax: (302) 739-4111
Email: andrea.maucher@state.de.us

DPA Consultants:

Glenn E. Watkins
Technical Associates, Inc.
9030 Stony Point Parkway, Suite 580
Richmond, VA 23235
Tel: 804-272-5363
Fax: 804-272-3598
Email: watkinsg@tai-econ.com

J. Randall Woolridge
Professor of Finance
Penn State University
302 Business Building
University Park, PA 16802
Tel: 814-865-1160
E-mail: jrwoolridge@gmail.com

Intervenors:

Robert A. Mulrooney, Vice President
Christiana Care Health Services, Inc.,
4755 Ogletown-Stanton Road
Newark, DE 19713
Tel: 302-733-3994
Fax: 302-733-3749
E-mail: RMulrooney@christianacare.org

Christiana Counsel:

Todd A. Coomes, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Tel: 302-651-7700
Fax: 302-651-7701
Email: Coomes@RLF.com

Christiana Consultant:

Brian Collins
Brubaker & Associates, Inc.

Mailing Address
PO Box 412000
St. Louis, MO 63141-2000

Physical Street Address
16690 Swingley Ridge Road, Suite 140
Chesterfield, MO 63017
mailto:bcollins@consultbai.com

Independence HOA

William C. Oliva
Independence Homeowners Association
c/o Ms. Sarah Dutton
23767 Samuel Adams Circle
Millsboro, DE 19966
stoneandbuck@yahoo.com

8427195